Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Performance Measurements and Standards for	)	
Unbundled Network Elements and	)	CC Docket No. 01-318
Interconnection	)	
	)	

COMMENTS OF THE VERIZON TELEPHONE COMPANIES

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January 22, 2002

EXECUTIVE SUMMARY

Verizon has experienced first-hand the "regulatory patchwork" of federal and state performance measurements. Indeed, Verizon reports approximately 2.4 million wholesale performance results each month, under at least seven separate sets of state reporting requirements and two sets of federal requirements. This performance measurement system imposes burdens on Verizon and other ILECs that far exceed any benefits of assessing their wholesale performance. Nor is there any question that the proliferation of such measurements — at the state and federal levels — has given rise to "increasingly divergent and costly requirements."

Matters are considerably different from when the Commission last addressed this issue and proposed, in its 1998 *OSS Notice*, to assist state commissions in the development of a comprehensive set of performance measurements. Over the past four years, state commissions have developed such measurements on their own. As a result, those few state commissions that have yet to develop their own measurements have little need for the Commission's help in this regard. Instead, the pressing need today is for state commissions to reduce the number of measurements, retaining only those that are the most critical to competition.

Verizon agrees with the Commission that the "adoption of national measurements and standards" could help to eliminate the current "inconsistency [and] redundancy" in the existing state and federal performance reporting regimes. However, as the Commission rightly recognizes, national measurements could also become simply "a new set of substantial and burdensome requirements imposed on carriers" that "merely increase the overall reporting burden on incumbent LECs." In order to strike the optimal "balance [between] competitors' concerns about poor provisioning . . . [and] the incumbent LECs' concern about the number and

cost of state and federal measurements and standards," Verizon proposes that the Commission adopt a set of national measurements based on the following four principles:

- A minimal number of measurements should be adopted, limited to those aspects of performance that are "particularly critical to carriers' ability to compete effectively";
- Both ILECs and CLECs should be required to report their performance;
- The performance standards, and any penalties for failure to meet those standards, should be based on the statutory requirement that LECs provide "nondiscriminatory" service; and
- The national measurements, and any penalties, should supplant, rather than supplement, the existing state and federal reporting requirements and performance remedy plans.

The Act authorizes the Commission to promulgate national performance measurements for interconnection and unbundled network elements and to require all carriers to report their performance under those measurements. The Act also requires the Commission to set performance standards for any such measurements that are consistent with the statutory obligation to provide nondiscriminatory service, and thus prohibits the Commission from setting standards that require incumbent LECs to provide competitors with superior service. Furthermore, the Act expressly prohibits the Commission from adopting a "self-executing liquidated damages rule similar to those that have been adopted by some states, where failure to comply with [national performance] standards would result in automatic payments to competitors." Finally, the Commission does not have clear statutory authority to preempt the existing state performance reporting regimes, and it is unlikely that state commissions will voluntarily eliminate inconsistent measurements.

Therefore, Verizon recognizes that the Commission may conclude that it should not, or that it lacks authority to, adopt national measurements that follow all four of the principles listed above. In that event, Verizon proposes, as a second-best approach, that the Commission adopt a

national performance measurements blueprint, consisting of a limited set of the "most essential measurements" that are "particularly critical to carriers' ability to compete." This blueprint would not create legally binding obligations, but instead would provide guidance to state commissions and to carriers about which aspects of an ILEC's performance the Commission considers to be "vital to competition." In addition, the Commission should use this blueprint to guide its future evaluations of section 271 applications and of BOCs' post-entry compliance. Such a blueprint would enable the Commission to obtain some of "the potential benefits of national standards," while not increasing, and possibly reducing, the regulatory burdens imposed on carriers.

The CLECs, however, will doubtless claim here, as they have in every state commission proceeding addressing performance measurements, that there are hundreds, if not thousands, of "essential" measurements in addition to those proposed in the Notice. The CLECs are also certain to insist here, as they have repeatedly elsewhere, on benchmarks that require near-perfect performance and on draconian penalties when an ILEC fails to meet those standards. However, because CLECs currently bear none of the cost of performance reporting and usually are the recipients of any penalties that ILECs pay, they have the incentive to argue for every conceivable performance measurement, without regard to whether the burdens imposed on ILECs and state and federal regulators outweigh any likely benefits obtained from those measurements. Moreover, the Act only entitles CLECs to receive nondiscriminatory service — there is no basis in the Act for requiring superior service from ILECs, whether through performance standards or through penalties set at levels well beyond what the Commission has found sufficient in its section 271 orders. Therefore, the Commission must reject these demands and instead adopt a set of national measurements that "cover activities that could be relatively easily measured and

that appear to be particularly critical to carriers' ability to compete effectively but that would not increase overall regulatory burdens on carriers."

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COMMENTS OF THE VERIZON TELEPHONE COMPANIES

The Verizon Telephone Companies ("Verizon")[1] respectfully submit these comments in response to the Commission's November 19, 2001 Notice of Proposed Rulemaking ("NPRM" or "Notice") in the above-captioned matter.

INTRODUCTION AND SUMMARY

Verizon strongly supports the Commission's goal of rationalizing the current "regulatory patchwork" of performance measurements. NPRM ¶ 3. There is no question that the proliferation of such measurements — at the state and federal levels — has given rise to "increasingly divergent and costly requirements." *Id.* ¶ 4. In Pennsylvania, for example, the Commission's order approving Verizon's section 271 application details Verizon's performance on 370 separate measurements[2] — yet this represents *less than one-fifth* of the nearly 2,000 separate measurements Verizon reports each month in that state. In New York, the Public Service Commission ("PSC") recently eliminated 238 performance measurements — leaving

[1] The Verizon Telephone Companies are identified in Appendix C to these comments.

[2] *See* Memorandum Opinion and Order, *Application of Verizon Pennsylvania Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, 16 FCC Rcd 17419, App. B (2001) ("*Pennsylvania Order*").

521 measurements in place, including 55 new measurements.[3] Verizon also must report its performance, pursuant to the Bell Atlantic/GTE merger conditions, for 25 states, plus the District of Columbia, including separate reports for its former Bell Atlantic and former GTE operations in Virginia.[4] In total, Verizon is currently subject to at least seven separate sets of state reporting requirements, in addition to the two federal reporting regimes, and reports approximately 2.4 million wholesale performance results each month.

Simply focusing on the number of performance measurements, however, does not give a true picture of the scope, burden, and cost of the systems work, data collection, and data processing involved. Verizon reports as many as seven pieces of data for each performance measurement, and normally reports its results not only for competitive local exchange carriers ("CLECs") in the aggregate, but also for each individual CLEC, for a total of approximately 6,500 reports each month. In Connecticut, where Verizon serves approximately 60,000 lines, Verizon reports approximately 200,000 pieces of performance data every month — or, three for each line it serves. Simply in order to store and process the billions of pieces of performance-related data that it captures each month, Verizon spent $14 million in 2001 and plans to spend an additional $14 million this year to develop a data warehouse that will provide a centralized system for the reporting of Verizon's performance under the various sets of measurements to

[3] *See* Order Modifying Existing and Establishing Additional Inter-Carrier Service Quality Guidelines at 2-3, *Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies*, Case 97-C-0139 (N.Y. PSC Oct. 29, 2001) ("*New York PSC October 2001 Order*").

[4] *See* Memorandum Opinion and Order, *Application of GTE Corp. and Bell Atlantic Corp. for Consent To Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application To Transfer Control of a Submarine Cable Landing License*, 15 FCC Rcd 14032, 14159-62, ¶¶ 279-282 & App. D Att. A (2000) ("*Bell Atlantic/GTE Merger Order*"); *see also* Letter from Carol E. Mattey, FCC, to Jeff Ward, Verizon, DA 02-14 (Jan. 8, 2002).

which it is subject. This is in addition to the tens of millions of dollars that Verizon has already spent for third-party OSS tests and audits of its performance reporting systems and procedures. Verizon also currently employs more than 150 people, at a combined annual salary of approximately $13 million, who are charged with the production of Verizon's performance measurement reports, quality assurance, and the on-going mechanization efforts for those reports.

Verizon believes that the "adoption of national measurements and standards" could "harmonize[]" and "streamline[]" the current "inconsistency [and] redundancy" in the existing state and federal performance reporting requirements. NPRM ¶¶ 16-17. If done correctly — by replacing the current regulatory sprawl with a set of 10 to 12 measurements that focus on the aspects of performance most critical to consumers — adoption of national measurements would both reduce local exchange carriers' ("LECs") overall regulatory burdens and increase the ease of monitoring carriers' compliance with the 1996 Act. *See, e.g., id.* ¶¶ 14, 19-20. However, as the Commission rightly recognizes, national measurements could also become simply "a new set of substantial and burdensome requirements imposed on carriers" that "merely increase [carriers'] overall reporting burden." *Id.* ¶¶ 3, 17. In light of the tens of thousands of state and federal performance measurements to which Verizon and other incumbent LECs ("ILECs") are currently subject, if the Commission can do no more than overlay a new set of measurements on top of those existing requirements, it would be better for the Commission to refrain from adopting national measurements entirely.

Accordingly, Verizon proposes the following four principles for the development of national measurements, which will best "balance competitors' concerns about poor provisioning . . . with the incumbent LECs' concern about the number and cost of state and

federal measurements and standards." *Id.* ¶ 6. *First*, the Commission should adopt the minimum number of measurements necessary to determine whether LECs are meeting the standards in the 1996 Act. In selecting these measurements, the Commission must recognize that every additional reporting requirement increases carriers' regulatory burdens, whether it is a new measurement or a further disaggregation of an existing measurement. Further, to ensure that the Commission requires carriers to report their performance on "only the most essential measurements," the national measurements should be regularly revisited and subject to revision, whether because of unanticipated flaws in the adopted measurements or the need to replace adopted measurements with more pertinent ones. *Id.* ¶ 28.

Second, the reporting requirements should apply to all LECs, whether former Regional Bell Operating Companies ("BOCs"), other large ILECs, small ILECs, or CLECs. Requiring CLECs, as well as ILECs, to report their performance under the national measurements provides a number of benefits, including easier resolution of disputes about performance data. Currently, most states require ILECs to report their wholesale performance, but do not place comparable requirements on CLECs. The result is not simply that CLECs bear none of the cost of performance reporting, but also that they often dispute ILECs' data without having any comprehensive data of their own. Furthermore, requiring CLECs' to report their performance data can provide the context necessary for determining the competitive significance of any apparent disparities in ILECs' reported retail and wholesale performance.

Third, any performance standards established, or penalties for failure to meet those standards, should be based on the statutory requirement that LECs provide "nondiscriminatory" service. As the Commission has recognized in its section 271 orders, nondiscriminatory service means that CLECs must be able to perform functions in "substantially the same time and

manner" as ILECs and that ILECs must offer access "sufficient to allow an efficient competitor a meaningful opportunity to compete."[5] This standard does not require perfection or the best feasible service,[6] although Verizon strives to provide this level of service. Nor does the 1996 Act require that retail and wholesale performance be indistinguishable: the Commission has repeatedly recognized that performance can be "nondiscriminatory within the meaning of the statute" even if it is not identical.[7] Therefore, unlike state commissions, which have set performance standards at "levels higher than what is necessary to meet the statutory nondiscrimination standard,"[8] the Commission's standards must be set at levels that measure whether ILECs are providing nondiscriminatory service. Similarly, in setting penalties for failure to achieve those standards, the Commission should keep in mind its frequent rejection of the proposition that "liability under [a performance plan] must be sufficient, *standing alone*, to completely counterbalance" any incentive a LEC might have to discriminate.[9]

Fourth, any national performance measurements and penalties should apply in place of — not in addition to — the existing state and federal reporting requirements and performance

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[5] *E.g.*, *Pennsylvania Order*, 16 FCC Rcd at 17520-21, App. C, ¶¶ 27-28 (internal quotation marks omitted).

[6] *See Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 758 (8th Cir. 2000), *cert. granted in part sub nom. Verizon Communications, Inc. v. FCC*, 531 U.S. 1124 (2001); *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 812-13 (8th Cir. 1997), *aff'd in part, rev'd in part sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999); *see also AT&T Corp. v. FCC*, 220 F.3d 607, 633 (D.C. Cir. 2000).

[7] *Pennsylvania Order*, 16 FCC Rcd at 17521, App. C, ¶ 27; *see* Memorandum Opinion and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd 3953, 3991, ¶ 85 & n.207 (1999) ("*New York Order*").

[8] *New York Order*, 15 FCC Rcd at 3975, ¶ 55 n.107.

[9] *Id.* at 4124, ¶ 435; *see also, e.g.*, *Pennsylvania Order*, 16 FCC Rcd at 17489, ¶ 130; Memorandum Opinion and Order, *Application of Verizon New England Inc., et al., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, 16 FCC Rcd 8988, 9121, ¶ 241 (2001) ("*Massachusetts Order*").

assurance plans. Verizon already reports versions of all 12 of the measurements the Commission has proposed in one or more jurisdictions. In fact, Verizon reports numerous versions of each of those measurements — in New Jersey alone, for example, the Board of Public Utilities ("BPU") has required Verizon to report more than 20 different pre-order response timeliness measurements and more than 180 different order notifier timeliness measurements; the BPU has also attached penalties to more than 75 of those measurements. For the Commission simply to add duplicative reporting requirements and penalties to the existing state and federal regimes would impose significant burdens on Verizon and other ILECs with no conceivable benefits. Unless national measurements and remedies are the *sole* measurements and remedies, "the potential benefits of national standards" will inevitably "be outweighed by the likely burdens imposed on carriers." NPRM ¶ 26.

Although Verizon supports the establishment of national measurements based on the four principles outlined above, portions of the Notice suggest that the Commission is considering adopting measurements that do not follow one or more of those principles. First, notwithstanding its recognition that "disaggregation . . . may, effectively, multiply the number of measurements reported," *id.* ¶ 33, the specific proposals in the Notice imply a level of disaggregation that corresponds to a set of 100 or more measurements. Second, although reporting by all carriers would best further the Commission's goals, only twice does the Notice raise the possibility of requiring carriers other than ILECs to report their performance, *see id.* ¶¶ 23, 80. Instead, the Notice strongly suggests that the measurements under consideration will apply only to ILECs (and, quite possibly, only to BOCs). *See, e.g., id.* ¶¶ 6, 15, 24, 29, 74, 81. Third, the Notice appears to contemplate performance standards and penalties that proceed from the premise that the 1996 Act requires ILECs to provide objectively excellent, rather than

nondiscriminatory, service. *See id.* ¶¶ 7, 22 & n.36, 25-26. Fourth, the Notice does not discourage state commissions from adopting additional performance reporting requirements. *See id.* ¶ 19 n.33.

In addition, the Commission's ability to adopt national measurements that displace the existing state regimes is limited. States are unlikely to harmonize their various performance reporting and penalty regimes with the federal measurements voluntarily, yet the Commission lacks clear statutory authority to preempt duplicative or additional state requirements. *See id.* ¶¶ 17-18. In any event, the Communications Act expressly prohibits the Commission from establishing "a self-effectuating liquidated damages rule . . . [that] would result in automatic payments to competitors." *Id.* ¶ 22.

Therefore, Verizon also proposes, as a second-best approach, that the Commission adopt a national performance measurements blueprint, which would consist of a limited set of measurements that are "vital to competition," with performance standards based on the statutory requirement of nondiscriminatory service. *Id.* ¶ 33. States that have already adopted hundreds (or thousands) of measurements could look to the federal measurements blueprint as they review their reporting requirements to eliminate redundant and less meaningful measurements. *See id.* ¶ 17. Likewise, those states that have yet to develop performance measurements could use such a blueprint in selecting from among the thousands of performance measurements that other states have established. *See id.* The Commission should leave implementation of the blueprint to state commissions and should neither require carriers to report their performance under these measurements nor impose penalties for failing to comply with these measurements. However, in evaluating section 271 applications and post-entry compliance, the Commission should focus its review on this limited set of measurements, while continuing to recognize that apparent

disparities in performance do not necessarily reveal a failure to comply with the statutory standards.[10] Although a national measurements blueprint would not strike the optimal balance between benefits and burdens, it is a clear second-best alternative.

In addition to discussing further the four principles for national measurements and the blueprint approach, described above, Verizon provides specific comments on the Commission's proposed performance measurements and standards. Verizon also addresses the Commission's questions regarding the implementation of national measurements, reporting procedures, performance evaluation, and statistical issues.

DISCUSSION

I. PRINCIPLES FOR THE ADOPTION OF NATIONAL PERFORMANCE MEASUREMENTS

In order for the Commission to achieve its goal of gauging "an incumbent LEC's overall performance in its role as a wholesale provider of both facilities and services" while "not increas[ing] overall regulatory burdens on carriers," *id.* ¶ 27, national performance measurements should comply with the four principles outlined below.

[10] *See, e.g.*, *New York Order*, 15 FCC Rcd at 3976, ¶ 59, 4061, ¶ 202; Memorandum Opinion and Order, *Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas*, 15 FCC Rcd 18354, 18378, ¶ 58 (2000) (*"Texas Order"*); Memorandum Opinion and Order, *Joint Application by SBC Communications Inc., et al., for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, 16 FCC Rcd 6237, 6252-53, ¶ 32 (2001) (*"Kansas/Oklahoma Order"*); *Massachusetts Order*, 16 FCC Rcd at 8995, ¶ 13; Memorandum Opinion and Order, *Application of Verizon New York Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Connecticut*, 16 FCC Rcd 14147, 14153, ¶¶ 12-13 (2001) (*"Connecticut Order"*); *Pennsylvania Order*, 16 FCC Rcd at 17513, App. C, ¶ 8; Memorandum Opinion and Order, *Joint Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri*, CC Docket No. 01-194, FCC 01-338, ¶¶ 34, 104 (rel. Nov. 16, 2001) (*"Arkansas/Missouri Order"*).

A. National Measurements Should Be Limited to a Small Number of Critical Measurements

As the Commission rightly recognizes, national performance measurements should be limited to a "core set," or "select group," of measurements that are "vital to competition and enforcement efforts." *Id.* ¶¶ 25, 33. The CLECs, however, will doubtless argue here, as they have in every state commission proceeding regarding performance measurements, for many more measurements than the twelve that the Commission identified and for every conceivable disaggregation of those measurements. The Commission should reject these entreaties and, instead, should limit the list of measurements to "activities that could be relatively easily measured and that appear to be particularly critical to carriers' ability to compete effectively but that would not increase overall regulatory burdens on carriers." NPRM ¶ 27.[11] Indeed, the Commission can best "build on the states' pioneering efforts" in this area, NPRM ¶ 15, by recognizing that, when it comes to performance reporting requirements, more is not always better and, often, simply is more.

The experience of the past five years — in state commission proceedings to adopt and revise measurements and in the Commission's many section 271 proceedings — demonstrates that very few of the thousands of existing performance measurements are truly among "the most essential." *Id.* ¶ 28. Certain products and services, by virtue of their order volumes, have more competitive significance than others. In addition, for other products and services, excellent past performance renders continued reporting unnecessary. Moreover, certain measurements are

[11] As explained in Part III, below, and in Appendix A to these Comments, certain of the measurements that the Commission has selected should be eliminated or replaced with other measurements. *See, e.g.*, NPRM ¶ 27. However, Verizon strongly supports the Commission's proposal to limit the set of national measurements to roughly one dozen.

more important to competition because the products and services that they measure play a more fundamental role in the pre-ordering, ordering, maintenance and repair, or billing processes.

First, national performance measurements should include only those products and services that CLECs order or use in substantial volumes. In particular, UNE Platform, UNE Loop, and UNE xDSL Loop products constitute the vast majority of CLEC order volumes in most states. Therefore, poor performance by an ILEC in providing these services will have a far greater impact on competition than would poor performance on products where order volumes are smaller.[12]

In adopting national performance measurements, the Commission should break from the current practice of reporting requirements preceding actual orders. For example, in a number of states Verizon has started to report its line splitting performance under *twenty-six* new measurements — notwithstanding the fact that, over the past three months, Verizon has received an average of fewer than *fifteen* valid, production line splitting orders per month per state across the entire former Bell Atlantic footprint. Although order volumes for this product might increase significantly in the future, for the present, there is no question that the cost of implementing these measurements far outweighs any conceivable benefits. As a general matter, in order to ensure that national measurements cover only those products and services that are "particularly critical to carriers' ability to compete," NPRM ¶ 27, the Commission should limit reporting requirements to products and services with substantial volumes of CLEC orders. As noted

[12] *See Arkansas/Missouri Order* ¶¶ 33-35 ("we arrive at the conclusion that SWBT's LMOS problems present limited competitive significance, in large part, due to the limited demand for UNE-platform lines in Arkansas and Missouri"); *New York Order*, 15 FCC Rcd at 4119-22, ¶¶ 322-329 ("If xDSL services continue to grow rapidly, however, the aggregate loop results will be more heavily influenced by Bell Atlantic's performance in provisioning xDSL-specific loops.").

above, these are generally UNE Platform, UNE Loop, and UNE xDSL Loop products. Although particular CLECs may have adopted business models that focus on other products and services, the 1996 Act is designed to promote competition, not particular competitors. There is no reason to impose national performance reporting requirements simply because certain CLECs have elected to specialize in narrow market niches.

Second, as the Commission recognizes, performance reporting requirements can "become unnecessary," even for products with substantial order volumes, when these products "are routinely provisioned in a nondiscriminatory and just and reasonable manner." *Id.* ¶ 78. State commissions have recently started to implement this principle, although only in part. For example, because Verizon's performance in provisioning interconnection trunks and collocation "has consistently met standards," the New York PSC substantially reduced the remedy payments that attached to the performance measurements for those services, although it did not eliminate the reporting requirements.[13] The Commission, therefore, should not institute national reporting requirements for products and services that ILECs have historically provisioned in a nondiscriminatory manner. At the least, the Commission should immediately "suspend any reporting requirements" for an ILEC that can demonstrate, based on existing state or federal performance measurements, that it has a consistent record of nondiscriminatory performance for particular products and services. NPRM ¶¶ 78-79.

Third, national performance measurements should be limited to those that measure products, services, or functions that are most fundamental to the competitive process, because they are prerequisites to other competitive activity. For example, although the Commission has

[13] *See* Order Amending Performance Assurance Plan at 7-8, *Petition Filed by Bell Atlantic-New York for Approval of a Performance Assurance Plan*, Case 99-C-0949 (N.Y. PSC Dec. 15, 2000).

proposed an OSS Pre-Order Interface Response Timeliness measurement, the availability of an ILEC's OSS interfaces is a prerequisite to the successful completion of any pre-ordering transaction. *See id.* ¶ 33. Even if an ILEC's pre-order response timeliness is at parity, CLECs' ability to compete effectively can be compromised if those interfaces are available substantially less often for CLECs than for the ILEC. As between the two measurements, therefore, interface availability is more competitively significant than response timeliness.[14] Similarly, Verizon has proposed a measurement of the timeliness with which ILECs distribute wholesale bills. *See* NPRM ¶ 28. Although state commissions have adopted multiple measurements of billing performance — such as billing accuracy or timeliness in responding to billing complaints — whether an ILEC's performance on those other measures is competitively significant depends, in large part, on whether the CLECs receive their wholesale bills in a timely fashion. The most accurate bills and the most prompt dispute resolution process will be of less benefit to CLECs if they receive their wholesale bills weeks or months late.

Despite the fact that all measurements are not equally important, the cost of implementing a measurement is roughly the same no matter what is being measured.[15] In addition, as the Commission recognizes, each measurement adopted also imposes costs on the regulators charged with implementing the performance reporting requirements, receiving and reviewing the reports, and enforcing any associated penalties. *See* NPRM ¶ 26. For example,

[14] For this reason, Verizon has proposed that that Commission replace its OSS Pre-Order Interface Response Timeliness measurement with an OSS Interface Availability measurement, which measures the availability of all of an ILECs' interfaces, not merely the pre-ordering interfaces. *See infra* section III.A.1 and Appendix A.

[15] When an ILEC must develop processes for creating or capturing the necessary data, or must alter its OSS in order to comply with a performance benchmark, the cost of implementing a measurement increases substantially. However, whether an ILEC must engage in this costly process development or OSS modification depends on the current state of its systems and not on the competitive significance of the product, service, or function being measured.

the Pennsylvania Public Utilities Commission ("PUC") found it necessary to contract with an independent consultant to train and assist its staff in the analysis of performance reports.[16] Given that the cost per measurement is roughly constant, the Commission should adopt only those few measurements for which the likely benefits to competition outweigh the certain costs to carriers and regulators. And CLECs' demands for more measurements and greater disaggregation should be viewed in light of the fact that, under the existing state and federal regimes, they bear none of the cost of performance reporting.

Accordingly, just as national performance measurements should be limited to the products, services, and functions most critical to competition, they should also be limited to the measurements most essential to capturing carriers' performance with respect to those products, services, and functions. State commissions are beginning to embrace this principle, recognizing that there is no reason to adopt two (or more) measurements when one will do. Thus, the New York PSC recently approved the elimination of a number of measurements that captured Verizon's performance for a subset of the activity covered by other measurements. For example, Verizon had been required to report on the number of trouble tickets submitted for certain products within 7 and 30 days of installation, even though trouble tickets submitted within 7 days appear in both measurements. Recognizing this duplication, the New York PSC eliminated the redundant 7-day measurements. In addition, some measurements are rendered superfluous by other measurements, which capture performance as well or better. For example, the New York PSC eliminated all of the average completed interval measurements it had previously adopted, in

[16] *See* Opinion and Order at 38-40, *Structural Separation of Bell Atlantic-Pennsylvania, Inc. Retail and Wholesale Operations*, Docket No. M-00001353 (Pa. PUC Apr. 11, 2001).

recognition of the fact that Verizon's provisioning performance was better captured by other existing measurements, such as the missed appointment measurement.

For similar reasons, the Commission should not adopt measurements that are correlated — that is, where poor performance on one measurement is likely to result in poor performance on another measurement. In these circumstances, only one measurement is necessary; the others simply provide redundant information at added cost. For example, the Commission's proposed on time performance, average delay days, missed appointment, and open orders measurements are highly correlated. *See* NPRM ¶¶ 48, 52, 59, 62. Indeed, the on time performance and missed appointment measurements are, in fact, the inverse of each other but in all other respects are the same measurement. Further, unless an ILEC misses an appointment (or fails to complete an order on time), there will be no delay days or open orders to measure. Thus, a single missed appointment would likely appear in three of these performance measurements and could appear in all four. There is no reason for such duplicative performance reporting requirements, especially when the missed appointment rate (or its inverse, the percentage completed on time) is highly relevant to determining the competitive significance of the average delay days and open orders measurements. When an ILEC misses very few appointments, the average length of any delays and the percentage of open orders is considerably less relevant to CLECs' ability to compete. In contrast, even a small average delay or percentage of open orders can be competitively significant if a large enough percentage of appointments is missed.

Limiting the set of national performance measurements, as described above, will not "encourage [ILECs] to center discriminatory activities on other non-measured performance dimensions." *Id.* ¶ 27. First, as the Commission has repeatedly recognized in the section 271

context, performance reporting and associated penalties are "not the only means of ensuring that [ILECs] continue[] to provide nondiscriminatory service to competing carriers."[17] CLECs have proven more than capable in the past of seeking remedies before the Commission, state commissions, and the courts for any perceived disparities in performance. Second, in order for an ILEC to target discriminatory behavior in this manner, it would either have to implement a policy that would involve directly informing a large number of employees, or have to alter its OSS in a way that would be easily visible to a similarly large number of employees. There is little chance that an ILEC could keep such a policy hidden from regulatory authorities.[18] Moreover, for such a policy of discrimination to be effective, it must result in consumers choosing not to purchase the targeted services from CLECs. For consumers to make this choice, they would need to be aware that the quality of the targeted services from CLECs was, or was likely to be, poorer than the ILEC's. It is highly implausible that such a service disparity could escape the attention of regulators but be known to consumers. Finally, the penalties for engaging in such intentional discrimination — which include, for BOCs, revocation of section 271 authority — are sufficiently severe to provide ample disincentive in the absence of any national reporting requirements.

For the same reasons, a high "level of disaggregation" is not "necessary to reveal discrimination." NPRM ¶ 33; *see id.* ¶ 47. Instead, increasing the level of disaggregation — whether by product, OSS interface used, or geography — "mulitpl[ies] the number of

[17] *Pennsylvania Order*, 16 FCC Rcd at 17489, ¶ 130; *see also, e.g.*, *Massachusetts Order*, 16 FCC Rcd at 9121, ¶ 241; *New York Order*, 15 FCC Rcd at 4167, ¶ 435.

[18] For example, a score of former Covad employees have come forward with sworn statements about Covad's practice of submitting false trouble tickets in order to affect Verizon's performance data and to influence regulators' decisions. *See* Application by Verizon Pennsylvania for Authorization To Provide In-Region, InterLATA Services in Pennsylvania, App. B, Tabs BB-7 & BB-8, CC Docket No. 01-138 (FCC filed June 21, 2001).

measurements reported," and the cost of that reporting, *id.* ¶¶ 33, 47, without an equivalent increase in the benefits obtained from the additional information. Increased disaggregation also reduces the sample size for each individual measurement, which, as the Commission has noted, renders the resulting "performance data . . . not as reliable an indicator of . . . compliance" with statutory requirements.[19] Nonetheless, CLECs are likely to argue, as they have in the past, that ILECs will be able to "hide" poor performance on one product, with superior performance on other products.[20] Not only would such an effort be easily detected and severely punished, but it would make little sense, as long as national measurements are limited to the most critical products. In order for this strategy to succeed, an ILEC would have to provide CLECs with service that is substantially better than required by the parity or benchmark standard on most of the measured products in order to "hide" poor performance on the targeted product. If the performance on the targeted product is sufficiently poor to lead consumers to choose the ILEC over the CLECs, then the superlative performance on the untargeted products, which are no less essential to competition, would be of equal or greater benefit to CLECs, by leading consumers to leave the ILEC. In any event, CLECs are well positioned to identify any instances in which an ILEC's performance on a specific product is significantly below its overall performance for a group of measured products. However, given the implausibility of this supposed strategy, the Commission should limit the number of disaggregations to those necessary to ensure apt comparisons between retail and wholesale performance, such as by differentiating between

[19] *Kansas/Oklahoma Order*, 16 FCC Rcd at 6254, ¶ 36.

[20] *See, e.g.*, Comments of MCI Telecommunications Corp. at 16, *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, CC Docket No. 98-56 (FCC filed June 1, 1998) ("MCI Comments").

dispatch and no dispatch orders, which are provisioned through fundamentally different processes.

B. All LECs Should Be Required To Report Their Performance Under National Measurements

As explained above, under the current, overlapping system of state and federal performance measurements, only ILECs have been required to report their performance. Because CLECs do not bear the cost of this reporting, they have the incentive to argue for every conceivable performance measurement, even when the burdens imposed on ILECs and regulators by those measurements far outweigh any likely benefits obtained.[21] Requiring "competitive LECs [to] collect [and report] their own data," NPRM ¶ 80; *see id.* ¶ 23, not only will better align CLECs' incentives with the public interest, but also will increase the utility of national measurements in four ways.[22]

First, requiring CLECs, as well as ILECs, to report their performance can reduce disputes about the accuracy of ILECs' data. Currently, because CLECs are not required to retain performance data, they often challenge the validity of ILEC's performance reports while lacking complete data on their own orders. For example, during Verizon's section 271 application for

[21] The Commission's concerns about the costs that performance reporting requirements impose on "small, rural, or midsized incumbent LECs," NPRM ¶ 24, can be best addressed by limiting the set of national measurements to those 10 or 12 measurements most relevant to competition. In addition, smaller ILECs and CLECs can be required to report their performance quarterly or annually, in order to reduce further the costs associated with national measurements. *See id.* ¶ 87.

[22] Regulations mandating performance reporting are normally unnecessary in a competitive market, as competitive pressures will provide sufficient incentives for carriers to provide high-quality service and to report their performance. To the extent that reporting requirements are deemed necessary, however, they should not be imposed asymmetrically, thereby placing the burdens entirely on one set of carriers. Instead, all carriers should be required to report information in their possession that would provide substantial benefits in assessing performance and thus outweigh the costs of collection.

Massachusetts, one CLEC that challenged Verizon's installation quality data was forced to admit, after reviewing the detailed order-by-order information Verizon provided, that it was "not able to find information on every single order."[23] Often CLECs simply assert that they have experienced poor performance, without any data to support their claims.[24] ILECs are forced to spend considerable resources reviewing the data underlying their performance results in order to respond to these claims. Moreover, such factual disputes are particularly difficult for the Commission to resolve in the context of the 90-day review period for section 271 applications.[25] For these reasons, the Commission has previously recognized the benefits of cooperative data reconciliations conducted by ILECs and CLECs.[26] Such reconciliations would be far easier if the Commission required CLECs to report on their experiences as wholesale customers.[27]

Second, CLEC reporting can assist the Commission in determining whether "statistically significant differences in measured performance . . . have little or no competitive significance in

[23] Supplemental Declaration of Robert Williams in Support of Rhythms Links Inc. Opposition to Verizon's Supplemental Application for 271 Authority in the State of Massachusetts ¶ 26, *Application of Verizon New England, Inc., et al. for Authorization To Provide In-Region InterLATA Service in Massachusetts*, CC Docket No. 01-9 (FCC filed Feb. 6, 2001) ("Williams Supp. Decl."); *see also Massachusetts Order*, 16 FCC Rcd at 9068-69, ¶ 145 & n.455.

[24] *See, e.g., Arkansas/Missouri Order* ¶¶ 34, 35 n.85, 37, 44, 46 n.115, 109.

[25] *See, e.g., Massachusetts Order*, 16 FCC Rcd at 9070-71, ¶ 147; *New York Order*, 15 FCC Rcd at 4120, ¶ 326.

[26] *See, e.g., id.* ¶ 147 & n.462 (relying on the results of "the Massachusetts Department['s] . . . comprehensive and detailed factual reconciliation of I-codes for the month of November 2000 with the participation of Covad and Verizon").

[27] To the extent that ILEC and CLEC data are based on date and time stamps unique to the ILEC and CLEC systems, some variation in reported performance is to be expected on measurements such as Time to Restore. However, Verizon currently provides CLECs with the raw data on their own orders and transactions. These files contain the same time and date stamps that Verizon uses to calculate its performance measurements.

the marketplace."[28] For example, CLEC reporting of "the percentage of all cancellations processed during the reporting period where the cancellation took place after the committed due date" would help "to capture fully the magnitude of any realized discrimination," by revealing the extent, if any, to which CLECs are actually harmed on those rare occasions when Verizon misses an appointment. NPRM ¶ 64. There is no reason to require ILECs to report this data, as it is as easily — if not more easily — reported by the CLECs. The CLECs, after all, are the carriers that would submit any such cancellations; they also would be aware that the cancellation occurred after the committed due date had passed.

Third, insofar as ILECs' performance is affected by CLEC actions, CLECs could be required to report on their interactions with ILECs. For example, CLECs are supposed to investigate troubles reported by their end users before submitting them to the ILEC, in order to ensure that a problem with the ILEC's network is the cause of the end user's trouble. However, if the CLEC initially identifies the trouble as occurring in the wrong portion of the ILEC's network — for example, in the outside plant when the trouble actually is in the central office — the initial trouble report will be closed as "no trouble found" and the CLEC will likely then submit a "repeat" trouble report identifying the trouble as occurring in the other portion of the network. This second trouble does not reflect any problem with the ILEC's repair efforts, but instead is a result of the CLEC's failure to investigate the original trouble report correctly.[29] Nonetheless, all troubles reported to an ILEC must be investigated, and the diversion of ILEC

[28] *New York Order*, 15 FCC Rcd at 3976, ¶ 59; *accord*, *e.g.*, *Pennsylvania Order*, 16 FCC Rcd at 17513, App. C, ¶ 8.

[29] For this reason, the New York PSC has recently approved a new exclusion to the Repeat Trouble Report measurement for misdirected troubles on UNE Loops. *See New York PSC October 2001 Order* at 4-5. Verizon proposes that the Commission adopt the same exclusion for its repeat trouble report measurement.

personnel to address misdirected trouble reports can impact the ILEC's ability to repair actual troubles in a timely fashion. Therefore, the Commission could require CLECs to report on the percentage of their "repeat" reports where the second report identifies the trouble as occurring in a different part of the ILEC's network.

Fourth, in the context of CLEC-to-CLEC conversions — that is, when an end user currently served by CLEC A chooses CLEC B as his local service provider — actions by both CLECs are particularly critical to competition. While Verizon provides CLECs with access to the customer service records ("CSRs") of its end user customers, CLECs control both the content of and access to their end user customers' CSRs. When CLEC B seeks to compete for an end user served by CLEC A, it must have access to that end user's customer service record, which indicates, among other things, the type of service and the features that end user currently purchases. For this reason, the New York PSC has sought comment on proposed guidelines that would govern CLECs' sharing of this information when their end user customers seek to switch to another LEC.[30] CLECs, therefore, should be required to report on the average time in which they release this information.

However, relying on the national performance measurements to enable "the Commission and competitive LECs to compare the performance of different incumbents" will not make "more transparent the extent to which an incumbent LEC is providing nondiscriminatory access." NPRM ¶ 26. First, whether an ILEC is providing nondiscriminatory access, as explained further below, must be determined through a comparison of the service it provides to CLECs with the service it provides to itself, its affiliates, and its end user customers. The fact

[30] *See* Notice Inviting Comments, *Proceeding on Motion of the Commission to Examine the Migration of Customers Between Local Carriers*, Case 00-C-0188 (N.Y. PSC Oct. 16, 2000).

that an ILEC provides a certain level of service in one state, but a superior level of service in another state, is irrelevant to the question of nondiscrimination. Instead, the appropriate question is whether the same level of service is provided to both wholesale and retail customers.[31] Second, as the Commission has recognized, there may be instances in which ILECs employ different, but equally nondiscriminatory, processes, such that uniform business rules and performance standards cannot be adopted. Thus, as the Commission has explained, although a BOC is required "to demonstrate that it is providing equivalent access to billing information, we do not mandate the use of a particular billing system."[32] Similarly, in approving Southwestern Bell's section 271 application for Texas, the Commission noted numerous differences between the processes employed in New York and Texas, while finding that both BOCs provide nondiscriminatory service.[33] And, in approving Verizon's Pennsylvania application, the Commission noted that certain processes in Pennsylvania and New York differ, but are both nondiscriminatory.[34] In each of these contexts, the Commission recognized that it is reasonable for BOCs to employ different methods in complying with the requirements of the Act.

C. Performance Standards and Any Associated Penalties Must Be Based on the Statutory Requirement of Nondiscriminatory Service

Performance Standards. The purpose of national performance measurements is "to help determine whether incumbent LECs are in compliance with the[] duties and other requirements"

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[31] *Cf. Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14163, ¶ 284 (declining "to require region-wide uniformity across measurements between different states" and finding that the performance plan gives each "individual operating compan[y] incentives to treat competitors as [it] would Bell Atlantic's or GTE's own retail operations").

[32] *New York Order*, 15 FCC Rcd at 4076-77, ¶ 228.

[33] *See, e.g., Texas Order*, 15 FCC Rcd at 18404-05, ¶ 109, 18429-30, ¶ 153 n.414, 18438-39, ¶ 171 n.461, 18530, ¶ 257.

[34] *See Pennsylvania Order*, 16 FCC Rcd at 17447, ¶ 44.

imposed by the 1996 Act. NPRM ¶ 14. As the Commission has recognized repeatedly, the 1996 Act "require[s] incumbents to make available to new entrants *in a nondiscriminatory and just and reasonable manner* the services and facilities the incumbents use to provide retail services to their own customers."[35] The Commission has interpreted "nondiscriminatory" to "require an *equivalency* between the terms and conditions an incumbent imposes on itself and third parties."[36] Therefore, "where technically feasible," the ILEC must provide service to CLECs that is "at least *equal-in-quality* to" — or "*substantially in the same time and manner*" as — "that which the incumbent LEC provides to itself."[37] Similarly, the Commission has interpreted "just and reasonable" to require ILECs to "provide an efficient competitor with a *meaningful opportunity* to compete."[38] The Commission has explained further that the "meaningful opportunity" standard is not "a weaker test than the 'substantially the same time and manner' standard" and is "intended to be a proxy for whether access is being provided in substantially the same time and manner and, thus, nondiscriminatory."[39]

Thus, it is clear that the 1996 Act does not establish any objective standard of service that ILECs must provide. Nor does it "mandate that requesting carriers receive superior quality

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[35] Notice of Proposed Rulemaking, *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnections, and Operator Services and Directory Assistance*, 13 FCC Rcd 12817, 12819, ¶ 2 (1998) (emphasis added) ("*OSS Notice*"); *see also* First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15766-67, ¶ 523 ("*Local Competition Order*") (subsequent history omitted).

[36] *OSS Notice*, 13 FCC Rcd at 12821, ¶ 8 (emphasis added).

[37] *Local Competition Order*, 11 FCC Rcd at 15658, ¶ 312 (emphasis added); *New York Order*, 15 FCC Rcd at 3971-72, ¶ 44 (emphasis added).

[38] *Local Competition Order*, 11 FCC Rcd at 15660, ¶ 315 (emphasis added).

[39] *New York Order*, 15 FCC Rcd at 3972, ¶ 45.

access to network elements."[40] To the contrary, the 1996 Act's requirement that ILECs provide service in a nondiscriminatory and just and reasonable manner "establishes a floor below which the quality of [service] may not go" and CLECs are entitled to "access only to an incumbent LEC's *existing* network — not to a yet unbuilt superior one."[41] For this reason the Commission has rejected arguments that incumbents are required to provide CLECs with OSS capability "that is superior to the system [the ILEC] has for its own retail representatives or customers."[42] The Commission has also recognized that performance can be "nondiscriminatory within the meaning of the statute" despite the fact that wholesale and retail performance are not indistinguishable.[43]

Therefore, unlike state commissions, which have set performance standards at "levels higher than what is necessary to meet the statutory nondiscrimination standard,"[44] the standards established for national performance measurements must be based on the statutory requirement of nondiscriminatory service and cannot require superior performance.[45] Accordingly, the presumptive standard for these measurements should be parity between an ILEC's wholesale performance and its retail performance in providing analogous products and services. As the Commission has previously found in the section 271 context, "where a retail analogue exists, a BOC must provide access that is equal to (*i.e.*, substantially the same as) the level of access that

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[40] *Iowa Utils. Bd.*, 120 F.3d at 812.

[41] *Id.* at 812, 813; *see Iowa Utils. Bd.*, 219 F.3d at 758 ("Nothing in the statute requires the ILECs to provide superior quality [service] to its competitors.").

[42] *New York Order*, 15 FCC Rcd at 4051-52, ¶ 185.

[43] *Pennsylvania Order*, 16 FCC Rcd at 17520-21, App. C, ¶ 27; *see New York Order*, 15 FCC Rcd at 3991, ¶ 85 & n.207; *see also Arkansas/Missouri Order* ¶ 33.

[44] *New York Order*, 15 FCC Rcd at 3975, ¶ 55 n.107.

[45] *See Iowa Utils. Bd.*, 120 F.3d at 812.

the BOC provides itself, its customers, or its affiliates, in terms of quality, accuracy, and timeliness."[46] Therefore, when a comparable retail product or function exists, there is no reason for the Commission to adopt a benchmark standard to serve as "a proxy for whether access is being provided in substantially the same time and manner."[47] Indeed, it is improbable that the benchmark will ever equal any one ILEC's performance, let alone every ILECs' performance, in providing the comparable retail product in a given month. As a result, the wholesale benchmark will require some ILECs to provide CLECs with superior service and will permit other ILECs to provide CLECs with inferior service. Both outcomes violate the 1996 Act.

Furthermore, because ILECs' performance varies across states, performance benchmarks are likely to be particularly unsuitable for national measurements.[48] Indeed, the measurements that the California PUC adopted for Verizon (former GTE operations) and Pacific Bell sometimes impose different benchmarks for the two carriers, in order to account for the inherent differences between Verizon's and Pacific Bell's processes and procedures.[49] If two large ILECs in a single state cannot be subjected to the same performance benchmarks, then there is little chance that the Commission can adopt a nationwide benchmark — for all ILECs, whether large

[46] *Pennsylvania Order*, 16 FCC Rcd at 17511, App. C, ¶ 5.

[47] *New York Order*, 15 FCC Rcd at 3972, ¶ 45.

[48] *Cf. id.* at 3975, ¶ 55 ("We recognize that metric definitions and incumbent LEC operating systems will likely vary among states . . . . Therefore, it is unlikely that we will see uniform standards that measure precisely the same BOC conduct across states.")

[49] For example, the LNP network provisioning measurement has a standard of not more than 0.25 percent provisioning failures for Pacific, but a standard of not more than 2 percent of such failures for Verizon. Similarly, the OSS availability measurement that the New York PSC adopted in February 2000 for then-Frontier Telephone of Rochester had a benchmark of 99 percent, which is less stringent than the 99.5-percent benchmark that the New York PSC adopted for Verizon. *See, e.g.*, Order Establishing Additional Inter-Carrier Service Quality Guidelines and Granting in Part Petitions for Reconsideration and Clarification App. I, *Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies*, Case 97-C-0139 (N.Y. PSC Feb. 16, 2000).

or small, urban or rural, and for all states, regardless of the degree to which competition has developed — that does not require at least some ILECs to provide CLECs with superior service. This is true even for those products that have no retail analog and that require a benchmark to gauge whether ILECs are providing access to CLECs that "would offer an efficient carrier a meaningful opportunity to compete."[50] Because ILECs do not use uniform processes throughout the nation and CLECs do not have uniform needs,[51] a single proxy for nondiscriminatory performance is not likely to exist. Therefore, to the extent that the Commission proposes benchmark standards, it should permit carriers and state commissions to seek waivers to modify those standards to allow for state-specific, or LEC-specific, performance standards that more accurately reflect the statutory requirement of nondiscriminatory service.[52]

The measurements that the Commission adopts should form the basis for its evaluation of future section 271 applications and of post-entry compliance with the requirements of the Act. *See* NPRM ¶ 19. Past evaluations of section 271 reviews have been unduly complicated by the vast number of state performance measurements and the difficulties in keeping those measurements current. Notwithstanding the fact that the Commission's "section 271 orders have evaluated and focused on select performance measures adopted by the states," *id.*, the tens of

[50] *Pennsylvania Order*, 16 FCC Rcd at 17511, App. C, ¶ 5 (internal quotation marks omitted).

[51] The Commission has noted that benchmarks set by state commissions "may well reflect what competitors in the marketplace feel they need in order to have a meaningful opportunity to compete." *New York Order*, 15 FCC Rcd at 3975, ¶ 55. If so, then the different benchmarks that have been established by state commissions thus far demonstrate that CLECs in different states have different perceptions about the level of ILEC service quality necessary "in order to have a meaningful opportunity to compete." However, the Commission has recognized that existing benchmarks also reflect state commissions' decisions "to set their performance benchmarks at levels higher than what is necessary to meet the statutory nondiscrimination standard." *Id.* ¶ 55 & n.107.

[52] *See also infra* section III.C.1.

thousands of performance results that Verizon and other BOCs produce monthly provide an inviting target for CLECs' attacks during state and federal section 271 proceedings. Nor has the Commission's recognition that "statistically significant differences" may "have little or no competitive significance in the marketplace" stopped the CLECs from trumpeting each performance "miss" as though it were conclusive evidence of CLECs' inability to compete.[53] As a result, Verizon and other BOCs must spend considerable time explaining (and, often, re-explaining) the flaws in various measurements and the resulting apparent disparities in performance.[54] And the Commission must resolve hundreds of disputes about isolated aspects of a BOC's performance.

Limiting the review of a BOC's performance to the roughly one dozen measurements most critical to competition would unquestionably "reduce carriers' overall regulatory burdens," and would not impair the Commission's ability to assess whether that BOC has complied, or continues to comply, with the competitive checklist. *Id.* The Commission should also extend its current practice of finding that performance meeting the standard set for a measurement "establish[es] compliance with the Act's requirements standing alone." *Id.*[55] However, because a statistically significant difference in performance is not necessarily competitively significant, the Commission has correctly recognized in the past that its "determination of whether a BOC's

[53] *Pennsylvania Order*, 16 FCC Rcd at 17513, App. C, ¶ 8.

[54] *See, e.g.*, *Massachusetts Order*, 16 FCC Rcd at 9067-68, ¶ 144 (addressing flaws in the installation quality measurement for stand-alone xDSL loops); *Connecticut Order*, 16 FCC Rcd at 14156, ¶ 20 (same); *Pennsylvania Order*, 16 FCC Rcd at 17464, ¶ 81 (same).

[55] *See, e.g.*, *Pennsylvania Order*, 16 FCC Rcd at 17513, App. C, ¶ 8 ("Thus, to the extent there is no statistically significant difference between a BOC's provision of service to competing carriers and its own retail customers, the Commission generally need not look any further. Likewise, if a BOC's provision of service to competing carriers satisfies the performance benchmark, the analysis is usually done.").

performance meets the statutory requirements necessarily is a contextual decision based on the totality of the circumstances and information before the Commission."[56]

Penalties. In adopting penalties for the failure to comply with national measurements, the Commission should similarly be guided by the 1996 Act's requirement of nondiscriminatory performance. This principle yields a number of corollary propositions. *First*, penalties should not be imposed merely because an ILEC's wholesale performance on a given measurement is worse, in absolute terms, than either its performance for the retail comparison group or the benchmark. As the Commission has previously recognized, it "would be *unreasonable* to expect a particular performance metric to always show *ex post* equal or better performance for service to a [CLEC], compared to that provided to the incumbent LEC's customers."[57] Such a requirement, the Commission continued, "would demand that the incumbent LEC provide *ex ante superior service* to a [CLEC], in order to ensure that random variation does not cause performance to the [CLEC] to drop accidentally below the level needed for a determination of parity."[58] Indeed, in what is fundamentally a parity process — that is, where an ILEC is doing the same type of work for the CLECs and for its retail operations — it should be expected that parity means that the results are sometimes better for the CLECs and sometimes better for the ILEC's retail customers.

Even assuming that an ILEC will be found to have missed a parity standard only when a performance disparity is statistically significant at the 95-percent confidence level, that still leaves a 5-percent chance that random variation caused the disparity.[59] Moreover, even if a

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[56] *Id.*

[57] *New York Order*, 15 FCC Rcd at 4182, App. B, ¶ 2 n.2 (emphasis added).

[58] *Id.* (emphasis added).

[59] Verizon's comments on the appropriate statistical methodologies for use with national performance measurements are found in section IV.C.

disparity is statistically significant, it is not necessarily competitively significant.[60] For these reasons, an ILEC's failure to meet the standard for a performance measurement should not lead to a "presumption of competitive harm." NPRM ¶ 22.

Second, the Commission should establish "an exceptions process . . . to permit an incumbent LEC to explain or restate reported results to account for circumstances beyond its control." *Id.* ¶ 32. The Commission has previously found that such processes are an appropriate element of performance remedy plans.[61] Under national performance measurements, ILECs should be permitted to demonstrate that their performance results have been skewed due to the "clustering" of data — that is, multiple incidents resulting from a single event, such as a single cable cut resulting in numerous lines being out of service for more than 24 hours. In addition, ILECs should be given an opportunity to show that their results have been impacted by CLEC behavior, such as causing excessive missed appointments, incorrect dispatch identification resulting in excessive multiple dispatch and repeat reports, and delays in rescheduling appointments when the ILEC has missed an appointment. Finally, ILECs should be able to establish that events such as emergencies, catastrophes, natural disasters, severe storms, work stoppages, or other events beyond its control affected the reported performance results. If an ILEC can show that any of these factors caused it to miss a performance standard, then no penalties should be assessed for that measurement.

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[60] *See, e.g.*, *New York Order*, 15 FCC Rcd at 3976, ¶ 59, 4061, ¶ 202; *Texas Order*, 15 FCC Rcd at 18378, ¶ 58; *Kansas/Oklahoma Order*, 16 FCC Rcd at 6252, ¶ 32; *Massachusetts Order*, 16 FCC Rcd at 8995, ¶ 13; *Connecticut Order*, 16 FCC Rcd at 15153, ¶¶ 12-13; *Pennsylvania Order*, 16 FCC Rcd at 17513, App. C, ¶ 8; *Arkansas/Missouri Order* ¶¶ 34, 104.

[61] *See, e.g.*, *New York Order*, 15 FCC Rcd at 4171, ¶ 441; *Texas Order*, 15 FCC Rcd at 18563-64, ¶ 427; *Massachusetts Order*, 16 FCC Rcd at 9123-24, ¶ 246; *Pennsylvania Order*, 16 FCC Rcd at 17488-89, ¶ 129 n.443.

Third, any penalties imposed under the Commission's forfeiture authority should not automatically be set at the statutory maximum, nor should larger penalties be imposed solely because a carrier is an ILEC.[62] *See* NPRM ¶ 22 & n.35. Instead, penalty amounts should be based on the competitive significance of a performance miss, as gauged by the duration and severity of the performance miss and the number of transactions affected. Simply put, an ILEC should be required to pay less in penalties for a one-time, minor performance miss that affects few CLEC orders than for a persistent, major performance miss that affects a large number of CLEC orders.[63] Assuming the penalty amounts are set at reasonable levels, such a system provides ILECs with optimal incentives not only to avoid performance misses, but also to minimize the competitive impacts of any performance misses that do occur. In contrast, applying a penalty of $1.2 million for all performance misses, regardless of competitive significance, can have two negative consequences. First, it can encourage ILECs to be indifferent to the severity of a performance miss, as a disparity of a few hours subjects it to the same penalty as a disparity of a few days. Second, it can have the effect of requiring ILECs, in order to avoid even the possibility of an inadvertent performance miss, to provide CLECs with superior, rather than nondiscriminatory, service.[64]

Further, assuming the Commission will require LECs to report their performance separately for each state in which they operate, and assess performance on a state-by-state basis,

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[62] *See infra* section II.B.2 (discussing the Commission's authority to require ILECs to pay penalties based on their performance under national measurements).

[63] The performance remedy plans in Texas and the other SWBT states operate in this fashion, as does the plan recently approved by the New Jersey BPU. *See Texas Order*, 15 FCC Rcd at 18560-61, ¶ 422; Order Approving Incentive Plan, *Investigation Regarding Local Exchange Competition for Telecommunications Services; Investigation Regarding the Status of Local Exchange Competition in New Jersey*, Docket Nos. TX95120631 & TX 98010010 (N.J. BPU Jan. 10, 2002).

[64] *Cf. New York Order*, 15 FCC Rcd at 4182, App. B, ¶ 2 n.2.

imposing higher penalties on ILECs as a class, *see* NPRM ¶ 22 n.35, will entail far greater penalties than the Commission has found necessary in the past to provide carriers with "a meaningful incentive . . . to maintain a high level of performance."[65] For example, although Verizon is an ILEC and a Fortune 10 company, it serves only 60,000 lines in Connecticut.[66] The performance assurance plan for that state, which the Commission found "provides additional assurance that the local market will remain open after Verizon receives section 271 authorization," places a total of $1.49 million at risk *annually*.[67] In contrast, assuming the Commission adopts only 12 measurements, Verizon could face a maximum liability of nearly $173 million annually in Connecticut, if penalties are set at the statutory maximum simply because Verizon is an ILEC.[68] Although Connecticut is the most extreme example, it is far from the only one. The plans that the Commission approved as part of the section 271 process in Oklahoma, Kansas, Arkansas, Missouri, and Massachusetts are capped at $44 million, $45 million, $48 million, $98 million, and $155 million annually, respectively.[69] Moreover, if the Commission were to adopt 20 measurements with penalties attached, $288 million would be placed at risk annually, which exceeds the $269 million at risk under the plan the Commission approved in New York and is essentially equal to the $289 million at risk under the plan approved in Texas.[70] In sum, to maintain consistency with the Commission's orders approving

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[65] *New York Order*, 15 FCC Rcd at 4167-68, ¶ 435.

[66] *See Connecticut Order*, 16 FCC Rcd at 14148, ¶ 2.

[67] *Id.* at 14181, ¶ 76.

[68] Assuming a penalty of $1.2 million per measurement per reporting month.

[69] *See Arkansas/Missouri Order* ¶ 129 n.409; *Massachusetts Order*, 16 FCC Rcd at 9121, ¶ 241; *Kansas/Oklahoma Order*, 16 FCC Rcd at 6378-79, ¶ 274.

[70] *See Texas Order*, 15 FCC Rcd at 18561-62, ¶ 424; *New York Order*, 15 FCC Rcd at 4167-68, ¶ 435.

section 271 applications, the statutory maximum penalty should be reserved for the most severe and persistent performance misses in those few states where LECs have extremely large net revenues.

Fourth, carriers may be penalized only once for any performance miss. Therefore, if the national performance measurements contain duplicative or correlated measurements, penalties can attach to only one of the measurements. For example, as noted above and as discussed further below, the Commission's proposed on time performance and missed installation appointment measurements are the same measurement — the failure to provide on time performance entails a missed appointment. Not only would it be duplicative and wasteful for the Commission to require ILECs to report their performance on both measurements, but it would also violate the Communications Act for the Commission to attach penalties to both measurements. Congress has limited the Commission's forfeiture authority;[71] the Commission may not evade those limits by requiring duplicative reporting of the same performance data and then punishing each performance miss as though it were a separate violation of the Act. The same is true for measurements that are correlated, but not entirely identical. For example, the proposed trouble report rate measurement would include trouble reports that are also captured in either the installation quality or the repeat trouble report rate measurements. Although the trouble report rate will also include some trouble reports that are not captured in one of the latter two measurements, an ILEC's performance on those two measurements can cause it to miss the overall trouble report rate measurement. Again, while requiring ILECs to report all three measurements is unnecessarily burdensome, imposing multiple penalties for the same performance violates the Act. If the Commission believes that $1.2 million is an insufficient

[71] *See* 47 U.S.C. § 503(b)(2)(B).

maximum penalty — even though it is more than sufficient for these circumstances — the appropriate course of action is for the Commission to petition Congress.[72]

D. National Performance Measurements and Penalties Should Replace Existing State and Federal Measurements and Penalties

As the Commission recognizes, in developing national performance measurements, it does not write on a clean slate. *See, e.g.*, NPRM ¶ 15. In light of the existing state and federal performance reporting requirements and penalties, national performance measurements could easily become nothing more than "a new set of substantial and burdensome requirements imposed on carriers." *Id.* ¶ 3. Thus, the Commission rightly questions whether maintaining "separate sets of federal and state performance measurements and standards" is inconsistent "with the deregulatory emphasis of the Act" and whether the "national measurements and standards . . . could serve to minimize inconsistency or redundancy of state and federal requirements." *Id.* ¶¶ 16, 18. Based on its extensive experience in developing, implementing, and reporting performance measurements, Verizon concludes that no meaningful "harmoniz[ing]" or "streamlin[ing]" can occur unless the adoption of national measurements presages the elimination of the current "regulatory patchwork" of state and federal requirements. *Id.* ¶¶ 3, 17.

First, the premise of the Notice's approach to performance measurements — that "the establishment of a select group of performance measurements can promote the goal of efficient and effective processes between competing carriers and incumbent LECs without increasing overall regulatory burdens on carriers," *id.* ¶ 25 — is the opposite of the predominant approach

[72] *See* Letter from Chairman Michael Powell, FCC, to the Senate and House Appropriations Committees (May 4, 2001), *at* http://www.fcc.gov/Bureaus/Common_Carrier/News_Releases/2001/nrcc0116.html ("Congress should consider increasing the forfeiture amount to at least $10 million").

among state commissions, which have generally preferred more measurements to fewer. Indeed, the Commission's limited set of twelve proposed measurements stands in stark contrast to the thousands of measurements that state commissions have adopted. Although state commissions have recently started to prune their performance measurements of the least useful and most redundant measurements, none has yet proposed to reduce its total number of measurements to one hundred, let alone to one dozen critical measurements. There is little reason to believe that the Commission's adoption of national measurements will cause these state commissions to rethink their position on the number of measurements necessary to determine "the extent to which an incumbent LEC is providing nondiscriminatory access." *Id.* ¶ 26. Yet, it is these thousands of reporting requirements — the vast majority of which have no counterpart among the Commission's proposed measurements — that are the source of the most significant regulatory burdens imposed by the current performance measurement regimes. Compared to the costs of implementing and reporting these measurements, the benefits obtained from harmonizing one dozen state and federal performance measurements are relatively minor. Therefore, unless these additional measurements are eliminated, the adoption of legally binding national performance measurements and standards will increase, rather than decrease, the burdens currently imposed on ILECs. *See id.* ¶ 17.

Second, there is also reason to doubt that state commissions will voluntarily eliminate inconsistencies between their measurements and the corresponding national measurements. *See id.* Verizon's experience has been that state commissions are understandably insistent on protecting their regulatory prerogatives and are less "inclined . . . to expend fewer resources developing and monitoring their own set of measurements for critical areas" than the Commission contemplates. *Id.* For example, although some states in Verizon's region have

been willing to adopt wholesale the measurements developed through the New York Carrier Working Group,[73] others, such as Pennsylvania and New Jersey, did not do so initially. Instead, those state commissions chose to adopt different business rules and performance standards for certain measurements, as well as many measurements that do not exist in New York.[74] Moreover, state commissions have limited resources, which often results in even consensus changes to performance measurements taking months or years to be approved. For example, even though no state commission has amended its performance measurements more often than the New York PSC, its most recent revision of those measurements implemented a number of changes that Verizon and the CLECs had agreed to six months earlier. To take another example, the California PUC waited nearly two years to revise the performance measurements it adopted in 1999, notwithstanding the fact that carriers had reached consensus on a majority of the changes eleven months before the PUC approved them. Thus, if national performance

[73] The New York PSC adopted interim measurements in February 1998 and permanent measurements in February 1999. Subsequently, in conjunction with the continued efforts of the Carrier Working Group, the New York PSC has ordered further revisions and updates to the guidelines on five occassions, most recently in October 2001. The New York PSC also developed a performance remedy plan based on those measurements that it deemed most important to competition, while attempting to avoid the redundancy that exists in the performance reporting requirements. State commissions in Massachusetts, Connecticut, Rhode Island, Vermont, Virginia, and Washington, DC, have adopted the New York performance measurements, while the commissions in the first four states have also adopted the New York remedy plan, with minor modifications.

[74] Pennsylvania, for example, is currently operating under an older set of measurements, which is based on an early version of the New York measurements but which also includes hundreds of additional measurements. New Jersey's performance measurements are similar to Pennsylvania's, but contain an even greater number of measurements. Those states also initially created their own remedy plans, which differ not only from the New York plan, but also from each other. Only recently have these states started to consider adopting the current New York guidelines and remedy plan. For example, a proceeding is underway in Pennsylvania to determine whether that state should adopt the current New York measurements and remedy plan. The Administrative Law Judge ("ALJ") has recently recommended that the Pennsylvania PUC adopt the New York regime. *See* Recommended Decision, *Performance Measures Remedies*, Docket No. M-00011468 (Pa. PUC Sept. 28, 2001).

measurements are mere default rules, to "apply only in the absence of corresponding state measurements," the differences between state and national performance measurements are likely to be persistent. NPRM ¶ 18.

Preemption of the existing state performance reporting regimes, therefore, is likely to be necessary to stem the "proliferation of differing state requirements [that] impose increasingly divergent and costly requirements on carriers." *Id.* ¶ 4. If states retain the authority to adopt measurements in addition to the national measurements, then there is little chance of a significant net reduction in LECs' reporting requirements. Nor should states have authority to alter the standards for those performance measurements that the Commission adopts. Those standards, which must be based on the 1996 Act's requirement of nondiscriminatory service, are both a floor *and a ceiling* in determining "whether incumbent LECs are in compliance with the[] duties and other requirements under the Act." *Id.* ¶ 14.[75] Therefore, any standards adopted by states that are more stringent than the national standards would require ILECs to provide CLECs with superior service. As noted above, to the extent that state-specific issues arise with respect to the national measurements — whether because certain products or services are unusually important to competition in a particular state, or because an ILEC's nondiscriminatory processes and procedures make reporting under the national performance measurements impossible — the Commission should address those issues through a waiver process rather than by giving state

[75] The Commission, not the various state commissions, has been delegated the authority to interpret the provisions of the 1996 Act. *See AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 397 (1999); *MCI Telecomms. Corp. v. Bell Atlantic-Pennsylvania*, 271 F.3d 491, 516 (3d Cir. 2001); *MCI Telecomms. Corp. v. BellSouth Telecomms., Inc.*, 112 F. Supp. 2d 1286, 1291 (N.D. Fla. 2000). Therefore, states have no authority to interpret the 1996 Act to require ILECs to meet more stringent performance standards than the Commission adopts.

commissions blanket authority to adopt modifications of, or additions to, the list of national measurements.

Verizon proposes that the national measurements be phased in, with reporting of all measurements required within eight months after the promulgation of national performance measurements. *See* NPRM ¶ 18. Although eight months is a reasonable period of time for LECs to complete any systems and process development required to report their performance under each measurement, LECs should be permitted to opt into the national measurements on a measurement-by-measurement basis prior to the end of that period. Once an ILEC begins to report a national performance measurement, any analogous state reporting requirements should be preempted. However, preemption of all applicable state reporting requirements should occur only after an ILEC begins to report its performance under every one of the national measurements.[76] Under this proposal, ILECs will have the incentive to complete any necessary systems and process work on an expedited basis, in order to obtain the benefits of reduced performance reporting obligations.

II. A NATIONAL MEASUREMENTS BLUEPRINT: THE SECOND-BEST ALTERNATIVE

National performance measurements developed in accordance with the four principles outlined above will strike the best possible "balance [between] competitors' concerns about poor provisioning . . . [and] the incumbent LECs' concern about the number and cost of state and federal measurements and standards." NPRM ¶ 6. However, as explained below, many of the questions posed in the Notice suggest that the Commission is considering adopting measurements that do not follow one or more of those principles. Furthermore, the

[76] Federal performance reporting requirements, such as those under the Bell Atlantic/GTE merger conditions, should be eliminated at this point as well.

Communications Act does not permit the Commission to adopt a self-executing performance remedy plan such as those that it has reviewed in section 271 proceedings. Nor does the Commission have clear legal authority to replace the existing state performance measurement regimes with a single, limited set of national measurements.

Therefore, in the event that the Commission concludes that it should not, or cannot, adopt a set of national measurements that complies with all four principles, Verizon proposes, as a second-best approach, that the Commission adopt a national performance measurements blueprint. These measurements would serve as a model approach for state commissions to follow, but would not create legally binding obligations on LECs. Nonetheless, having identified a list of the measurements most critical to competition, the Commission should use this blueprint to guide its future evaluations of section 271 applications and of BOCs' post-entry compliance. Adopting such a blueprint would enable the Commission to obtain some of the benefits of the approach outlined in Part I, while not increasing, and possibly reducing, the regulatory burdens imposed on carriers.

A. The Notice Suggests That the Commission May Promulgate Measurements That Do Not Follow One or More of the Four Principles

First, consistent with the principle that national measurements be limited to those that are "vital to competition," the Notice proposes a "core set" of only twelve performance measurements. *Id.* ¶¶ 25, 27, 33. However, Verizon's experience is that, in practice, the actual number of measurements increases exponentially when measurements are disaggregated by interface, product, and geography, and multiple performance standards are established. For example, in New Jersey, the guidelines list 49 measurements, but contain more than 2,200 disaggregated measurements. Similarly, though to a lesser extent, the 30 measurements listed in the Commission's *OSS Notice*, which were disaggregated to varying degrees, would have

resulted in more than 317 actual measurements.[77] Although the Commission acknowledges that "disaggregation . . . may, effectively, multiply the number of measurements reported," many of the statements and questions in the Notice suggest that, instead of the twelve listed measurements, there will be 100 or more reporting requirements. NPRM ¶ 33. For example, the Commission requests comment on proposals for seven separate reporting requirements for both the average delay days and the open orders in hold status measurements. *See id.* ¶¶ 54, 63. The Commission also seeks comment on the creation of multiple geographic reporting areas within states. *See id.* ¶ 83. And, though the Notice is essentially silent on the question of disaggregating the proposed measurements by product or interface, it notes a WorldCom proposal that would maintain the current practice of disaggregating measurements to the greatest degree possible. *See id.* ¶ 33 & n.51. If the national performance measurements are disaggregated to this degree, they will necessarily "increase overall regulatory burdens on carriers" and will require reporting of activities that are not even arguably among those "particularly critical to carriers' ability to compete." *Id.* ¶ 27.

Second, although the Commission requests comment "on whether th[e] responsibility [for performance reporting] should also fall on competing carriers," *id.* ¶ 80; *see also id.* ¶ 23, the Notice overwhelmingly suggests that the measurements under consideration will apply only to ILECs, and, potentially, only to BOCs. For example, the Commission seeks comment "on whether national measurements, standards, and reporting requirements . . . should apply to all incumbent LECs," or only "to some subset of incumbent LECs." *Id.* ¶ 23. Similarly, the Commission inquires whether "any audit requirements" associated with the national

[77] *See* Comments of the Bell Atlantic Telephone Cos. at 6, *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, CC Docket No. 98-56 (FCC filed June 1, 1998).

measurements "should be applied only to a particular class of carriers (*e.g.*, BOCs)." *Id.* ¶ 74. Nor does the Notice propose any specific performance reporting requirements for CLECs, despite the fact that much information relevant to determining the competitive significance of ILECs' performance is in CLECs' hands. *See, e.g., id.* ¶ 64 (requesting comment on "the usefulness of requiring *incumbent LECs* to report the percentage of all [*CLEC*] cancellations . . . where the cancellation took place after the committed due date") (emphasis added). In light of the benefits that would be obtained if all LECs — ILECs and CLECs — were required to file performance reports, the Commission should use the promulgation of national measurements to end the current ability of CLECs to propose an endless stream of measurements that impose significant burdens on ILECs and state and federal regulators while they bear none of the costs.

Third, as the Commission recognizes, the purpose of national measurements is "to help determine whether incumbent LECs are in compliance with . . . the [1996] Act." *Id.* ¶ 14. The Act requires ILECs to provide CLECs with nondiscriminatory service, not objectively excellent service. Yet, at times, the Notice suggests that the national performance measurements will be designed to "ensur[e] that incumbent LECs maintain a *high level* of service quality" and will "produce *better overall* performance by incumbents" through "the threat of sanctions for poor performance." *Id.* ¶¶ 7, 26 (emphases added). In this vein, for certain measurements the Notice seeks comment on benchmark standards that are independent of the quality of the ILECs' comparable retail performance and that require excellent, rather than nondiscriminatory, service. *See id.* ¶ 51 (standard of 96 percent for percent on time); *id.* ¶ 58 (standard of less than or equal to 1 or 1.5 percent for installation quality trouble reports). Others go beyond mere excellence and would require ILECs to achieve perfection. *See id.* ¶ 45 (standard of 100 percent for jeopardy notification); *id.* ¶ 64 (standard of 0 percent for open orders in hold status greater than

30 days). Likewise, the Notice suggests a level of penalties for failing to meet performance standards that is orders of magnitude beyond what the Commission has previously found sufficient. *See id.* ¶ 22 (asking whether "the base forfeiture amount should be the statutory maximum" of $1.2 million). Because the 1996 Act requires only nondiscriminatory performance, the Commission lacks authority to require superior service or to impose penalties at levels that in effect require the ILECs to provide such service in order to avoid incurring severe penalties due to random variation.

Fourth, in light of the Commission's "greater experience with performance measurements and the realities of the competitive marketplace," the current Notice proposes fewer than half as many measurements as the Commission's *OSS Notice*. *Id.* ¶ 8. As the Commission recognizes, a "minimally burdensome" set of performance measurements, limited to those that are "particularly critical to carriers' ability to compete effectively," can "gauge . . . an incumbent LEC's overall performance in its role as a wholesale provider of both facilities and services." *Id.* ¶ 27. Although the Commission has appropriately narrowed its set of proposed measurements, the Notice encourages state commissions not "to slow down or otherwise scale back ongoing state workshops intended to measure compliance with the checklist items in section 271(c)(2)(B)." *Id.* ¶ 19 n.33. Yet, unless the states "slow down" the creation of new measurements and "scale back" the current number of measurements, or are required to do so, any legally binding national measurements the Commission promulgates will become merely "a new set of substantial and burdensome requirements." *Id.* ¶ 3.

B. The Act Limits the Commission's Legal Authority over National Performance Measurements

Under the 1996 Act, state commissions would have primary authority to enforce any national performance measurements that the Commission promulgates. The Commission's

authority would be limited to BOCs that have received section 271 approval and the rare cases in which a state commission fails to act to carry out its responsibility under section 252. Even in those circumstances, the Commission would be required to follow the procedures set forth in sections 208 and 503 of the Act before imposing any penalties. Therefore, the Commission has no authority to adopt a self-executing liquidated damages rule for violations of the national measurements. Finally, the Commission does not have clear statutory authority to preempt state performance requirements, although it is not expressly prevented from doing so.

1. The Commission Has Limited Authority To Enforce Any National Measurements Promulgated

Verizon agrees that the Commission has statutory authority both to promulgate national performance measurements and standards for evaluating LEC compliance with the requirements of sections 251 and 271 of the Communications Act,[78] and to require LECs to report their performance under such measurements and standards.[79] *See* NPRM ¶ 14. Verizon also agrees that section 271(d)(6)(A) of the Act authorizes the Commission to impose penalties on a BOC that has received approval to provide in-region, interLATA service, if its failure to comply with national performance standards in such a state results in a violation of the competitive checklist. *See id.* ¶ 21. A carrier could also attempt to prove, in a proceeding brought under section 208 of the Act, that it suffered damages as a result of a BOC's failure to meet the performance standards that rises to the level of a violation of section 271.[80]

[78] *See* 47 U.S.C. § 201(b); *AT&T Corp.*, 525 U.S. at 380.

[79] *See* 47 U.S.C. §§ 218, 403.

[80] *See id.* §§ 208-209, 271(d)(6)(B); 47 C.F.R. §§ 1.721(c), 1.736. However, section 271(d)(6)(B) does not authorize CLEC complaints that merely allege a violation of the national performance standards and do not also allege a violation of section 271. *See* 47 U.S.C. § 271(d)(6)(B) (authorizing the Commission to "establish procedures for the review of complaints concerning failures by Bell operating companies to meet conditions required for approval under [section 271(d)(3)]").

However, the 1996 Act does not authorize the Commission to penalize other carriers — whether BOCs in states where they have yet to receive section 271 approval, other ILECs, or CLECs — for noncompliance with the national performance measurements. Instead, only state commissions would have the authority to impose such penalties, through the enforcement of interconnection agreements. The requirements of section 251 are not self-executing. Rather, the 1996 Act clearly contemplates that specific interconnection obligations will be established through agreements negotiated by the interconnecting carriers or arbitrated by state commissions.[81] Because arbitrated agreements must "meet the requirements of section 251 . . . , including the regulations prescribed by the Commission pursuant to section 251," the Commission could require state commissions to include national performance measurements in subsequently arbitrated agreements.[82] But it would be state commissions — not the FCC — that would have the initial authority to enforce compliance with such an agreement, once approved.[83]

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[81] *See* 47 U.S.C. § 252. Indeed, the fact that the 1996 Act permits carriers to negotiate interconnection agreements that do not incorporate the requirements of section 251 indicates that Congress did not intend for those obligations to apply through direct enforcement under the Act itself. *See id.* § 252(a)(1).

[82] *See id.* § 252(e)(2)(B).

[83] *See id.* § 252(e)(5)-(6). The Commission, and a majority of the courts of appeals to consider the question, have concluded that "enforcement of [interconnection] agreements is within the states' 'responsibility' under section 252." Memorandum Opinion and Order, *Starpower Communications, LLC Petition for Preemption of Jurisdiction of the Virginia State Corp. Commission*, 15 FCC Rcd 11277, 11279-80, ¶ 6 (2000); *see Southwestern Bell Tel. Co. v. Brooks Fiber Communications*, 235 F.3d 493, 496-97 (10th Cir. 2000); *Southwestern Bell Tel. Co. v. Connect Communications Corp.*, 225 F.3d 942, 946 (8th Cir. 2000); *MCI Telecomms. Corp. v. Illinois Bell Tel. Co.*, 222 F.3d 323, 338 (7th Cir. 2000), *cert. denied*, 531 U.S. 1132 (2001); *Southwestern Bell Tel. Co. v. Public Util. Comm'n*, 208 F.3d 475, 479-80 (5th Cir. 2000); *Iowa Utils. Bd.*, 120 F.3d at 804; *cf. Bell Atlantic Maryland, Inc. v. MCI WorldCom, Inc.*, 240 F.3d 279, 303 n.6, 304, 307 (4th Cir. 2001). *But see BellSouth Telecomms., Inc. v. MCIMetro Access Transmission Servs., Inc.*, Nos. 00-12809 & 00-12810, 2002 WL 27099 (11th Cir. Jan. 10, 2002). As the Commission is aware, the Supreme Court has recently heard argument in two cases raising the question, among others, whether a state commission's action enforcing a previously approved interconnection agreement is a determination under section 252. *See Mathias v. WorldCom Techs., Inc.*, No. 00-878 (U.S. argued Dec. 5, 2001); *Verizon*

Because the 1996 Act confers such authority on state commissions, carriers could not bring an action before the Commission under section 208 alleging that failure to meet the national performance standards violated section 251. *See* NPRM ¶ 21.[84]

2. The Commission Is Prohibited from Adopting a Self-Executing Liquidated Damages Rule Resulting in Automatic Payments to CLECs

Even if the Commission had plenary authority to enforce national performance measurements and to impose monetary penalties for noncompliance — and, as explained above, it does not — the Act expressly prohibits it from adopting a "self-executing liquidated damages rule . . . where failure to comply with [national performance] standards would result in automatic payments to competitors." NPRM ¶ 22. The section of the Act that authorizes the Commission to "institute an inquiry . . . relating to the enforcement of any of the provisions of this [Act]"

Maryland Inc. v. Public Serv. Comm'n of Maryland, Nos. 00-1531 & 00-1711 (U.S. argued Dec. 5, 2001). A decision is expected no later than June 2002.

[84] Contrary to the Commission's statements in the *Local Competition Order*, 11 FCC Rcd at 15564-65, ¶¶ 126-128, the Commission has no authority under section 208 to hear complaints that a failure to meet the national performance measurements violates sections 251 or 252. As the Eighth Circuit held, this "expansive view of [the Commission's] authority under section 208 is . . . contradicted by the language, structure, and design of the Act," which gives state commissions "primary authority to enforce the substantive terms of the agreements made pursuant to sections 251 and 252." *Iowa Utils. Bd.*, 120 F.3d at 804. Although this holding was vacated on ripeness grounds, *see AT&T Corp.*, 525 U.S. at 386, three Justices found that "the Court of Appeals' conclusion that the FCC lacks [authority under 47 U.S.C. § 208 to consider complaints arising under sections 251 and 252] carries considerable force." *Id.* at 407 n.3 (Thomas, J., concurring in part and dissenting in part, joined by Rehnquist, C.J., and Breyer, J.). This view is also consistent with the considered position of the Commission and of the United States in litigation involving the 1996 Act. *See* Brief for Respondents at 20, *Global NAPs, Inc. v. FCC*, No. 01-1192 (D.C. Cir. filed Dec. 13, 2001) ("Under the Act, authority to resolve section 252 disputes lies *in the first instance* with state commissions.") (emphasis added). Even if the Commission had the authority to hear a complaint under section 208 in these circumstances (and it does not), it should defer to responsible state commissions as a matter of comity. *See AT&T Corp. v. Bell Atlantic Corp.*, 15 FCC Rcd 17066, 17071, ¶ 12 (2000), *aff'd sub nom. MCI WorldCom Network Servs., Inc. v. FCC*, No. 00-1406, 2001 U.S. App. LEXIS 27252, at *19 (D.C. Cir. Dec. 28, 2001) ("it would be entirely reasonable for the FCC to defer to the states as a matter of comity").

expressly "except[s] orders for the payment of money" from that authority.[85] Although the Commission could impose a forfeiture on its own motion through the specific mechanisms established by Title V of the Communications Act, that section also bars the Commission from adopting a self-executing forfeitures rule. Instead, Title V states that "no forfeiture penalty shall be imposed under this subsection against any person unless and until" the Commission follows an elaborate set of procedures.[86]

First, after receiving performance reports showing that a LEC has not met one or more of the performance standards, the Commission would be required to issue a "notice of apparent liability," in writing, specifying "each specific provision, term, and condition" that the LEC had apparently violated, the nature of the act or omission charged, the facts upon which the charge was based, and the date upon which such conduct occurred.[87] However, the Commission could not impose penalties at that point. Instead, the Commission would then have to wait a "reasonable period of time," ordinarily 30 days from the date of the Notice of Apparent Liability, for the LEC to respond.[88] Finally, after considering the LEC's response, the Commission could impose the forfeiture, but it could not immediately require payment; instead, if the LEC refused

[85] 47 U.S.C. § 403.

[86] *See id.* § 503(b)(4); *see also* First Report and Order and Further Notice of Proposed Rulemaking, *Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as Amended*, 11 FCC Rcd 21905, 22066-67, ¶ 334, 22076, ¶ 354 (1996).

[87] 47 U.S.C. § 503(b)(4).

[88] *See id.* § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3). This response would provide a LEC with the opportunity to argue that its reported performance results were affected by factors beyond its control. Thus, it could function as an "exceptions process." NPRM ¶ 32. In addition, the LEC's response could include arguments regarding the applicability of the adjustment criteria in the Commission's regulations, which may justify upward or downward departures in a forfeiture amount. *See* 47 C.F.R. § 1.80 note (Guidelines for Assessing Forfeitures § II).

to pay, the government would have to bring a "civil suit" to recover the funds.[89] The district court would then conduct a trial, during which it would have the power to review both the facts surrounding the alleged violation and the amount of the forfeiture imposed.[90] The court's review would not be limited to the administrative record before the Commission, and the findings and conclusions of the Commission would carry "[no] weight whatsoever."[91] Only then could the Commission require the LEC to pay penalties.[92] In short, the process for requiring forfeitures under section 503 is anything but self-executing.[93]

Moreover, the Act does not authorize the Commission to require ILECs to pay forfeitures to CLECs. Section 504(a) of the Communications Act provides that forfeitures are "payable into the Treasury of the United States."[94] Nor can the Commission transfer the amounts paid by an ILEC to CLECs. Only Congress can authorize payments from the United States Treasury, and

[89] 47 U.S.C. § 504(a); *Miami MDS Co. v. FCC*, 14 F.3d 658, 661 (D.C. Cir. 1994).

[90] *See United States v. Daniels*, 418 F. Supp. 1074, 1080-81 (D.S.D. 1976).

[91] *FCC v. Summa Corp.*, 447 F. Supp. 923, 925 (D. Nev. 1978).

[92] In addition, until the LEC pays the forfeiture or a court has issued a final order requiring payment of the forfeiture, the Commission cannot use its conclusion in a notice of apparent liability to the detriment of the LEC "in any other proceeding before the Commission." 47 U.S.C. § 504(c).

[93] Section 503(b)(3)(A) of the Act gives the Commission the discretion to impose a forfeiture "after notice and an opportunity for a hearing . . . in accordance with section 554 of Title V," instead of through the notice of apparent liability process. 47 U.S.C. § 503(b)(3)(A). However, doing so would involve conducting a full evidentiary hearing under the Administrative Procedure Act, subject to both the Commission's own panoply of procedures for appeal and review in the D.C. Circuit. *See* 47 C.F.R. § 1.80(g); 47 U.S.C. § 503(b)(3); *see also* 5 U.S.C. § 554. These procedures are, if anything, more burdensome than the notice of apparent liability procedures. *See, e.g.*, *Reeve Aleutian Airways, Inc. v. United States*, 982 F.2d 594, 602 (D.C. Cir. 1993).

[94] 47 U.S.C. § 504(a); *see also* 31 U.S.C. § 3302(b) ("an official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim").

no provision of the Act allows the Commission to make such payments to CLECs.[95] As Chairman Powell has explained, "[n]o one at the Federal Communications Commission . . . ha[s] a checkbook or the kind[] of authority necessary to draw on the funds of the United States Treasury."[96] Forfeitures imposed for violations of national performance standards, therefore, could not be used to reimburse CLECs for any harm caused by a failure to meet those standards.

Finally, the Commission cannot create a self-executing liquidated damages system through the section 208 complaint proceeding.[97] Before the Commission can issue an order requiring an ILEC to pay damages, it must conduct a hearing, which would occur pursuant to the Commission's complaint procedures.[98] During that hearing, the CLEC would bear the burden of proving both that the ILEC violated the Act by failing to meet the national performance standards and that it had been damaged by those actions. The Commission could not assume that performance below the standards is equivalent to a violation of the Act,[99] especially in light of its frequent recognition that an ILEC does not fail to comply with the requirements of the Act

[95] *See* U.S. CONST., art. I, § 8; *Bell Atlantic Tel. Cos. v. FCC*, 24 F.3d 1441, 1445 (D.C. Cir. 1994); *Dragon v. United States*, 414 F.2d 228, 229 (5th Cir. 1969).

[96] Testimony of Michael K. Powell, Chairman, FCC, *NextWave Settlement Legislation: Hearing Before the Subcommittee on Telecommunications and the Internet of the House Committee on Energy and Commerce* (Dec. 11, 2001).

[97] As explained above, with respect to the local competition provisions of the 1996 Act, the Commission's authority to hear complaints under section 208 is limited to allegations that a BOC has violated section 271. However, the conclusion that section 208 does not authorize the establishment of a self-executing remedy applies even if the Commission were correct that it can hear complaints under section 208 that a LEC violated sections 251 and 252 by failing to comply with the national performance standards.

[98] *See* 47 U.S.C. § 209 ("If, *after hearing on a complaint*, the Commission shall determine that . . . [a] complainant is entitled to . . . damages . . . , the Commission shall make an order directing [payment] . . . .") (emphasis added); 47 C.F.R. §§ 1.711-1.736.

[99] *See Iowa Utils. Bd.*, 120 F.3d at 806-07.

merely because there are statistically significant differences in its performance data.[100] For the same reasons, the Commission could not presume that such differences actually damage CLECs.[101] And, even if the Commission were able, consistent with section 206,[102] to adopt presumptive damage amounts that eliminated the need for a CLEC to prove the precise extent of its damages, those amounts could be no more than rebuttable presumptions and could not form the basis for a "self-effectuating liquidated damages rule." NPRM ¶ 22.[103]

In sum, even if the Commission had *full* authority to enforce national performance measurements, it would have *no authority* to establish a system that automatically required payments from ILECs to CLECs upon failure to comply with one of the Commission's standards.

3. The Commission Lacks Clear Statutory Authority To Preempt State Performance Measurements

Whatever the extent of the Commission's authority to enforce compliance with national performance measurements, Verizon concludes that the Commission does not have clear statutory authority to preempt the existing state performance measurement regimes, although it is not expressly precluded from doing so.

For the Commission to preempt the existing state performance measurement regimes, it would have to conclude that state actions requiring ILECs to report their performance under any

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[100] *See, e.g., Pennsylvania Order*, 16 FCC Rcd at 17513, App. C, ¶ 8.

[101] *See, e.g., id.*

[102] *See* 47 U.S.C. § 206 (limiting recovery to "the full amount of *damages sustained* in consequence of [a] violation of the provisions" of the Act) (emphasis added); 47 C.F.R. § 1.722(c) (requiring complainants to provide evidence of the extent of any damages suffered).

[103] *See Heckler v. Campbell*, 461 U.S. 458, 467 & n.11 (1983) (although an agency required to hold a hearing may determine that matters do "not require case-by-case consideration," parties must be permitted to rebut any presumption adopted with specific evidence); *see also Association of Oil Pipe Lines v. FERC*, 83 F.3d 1424, 1439 (D.C. Cir. 1996).

measurements that differ from those the Commission adopts "substantially prevent implementation of the . . . purposes" of the local competition provisions of the 1996 Act.[104] As the Commission recognizes, in the 1996 Act, Congress sought to strike a balance between promoting competition and minimizing the amount of regulation in the telecommunications industry. *See*, *e.g.*, NPRM ¶¶ 3, 18, 26.[105] In promulgating national measurements, the Commission could conclude that it has struck the optimal balance between competition and regulation. Thus, the Commission could argue that state requirements that differ from the national measurements — because they either impose more stringent performance standards or require reporting of additional performance data — tip the balance too far in the direction of regulation, by adding substantial regulatory burdens without providing comparable benefits in terms of assessing ILECs' compliance with the Act.[106] Indeed, the Supreme Court has recently held that a federal agency's regulation, which sought to strike a balance between competing policy goals, preempted conflicting state legal requirements that struck a different balance.[107]

Nonetheless, numerous provisions of the 1996 Act preserve state commission authority, and some of these provisions specifically contemplate that states will impose their own

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[104] 47 U.S.C. § 251(d)(3)(C).

[105] *See also* 47 U.S.C. §§ 251(a)(1), 160(a), 161(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, 56 (1996) (goal of Act is to "reduce regulation").

[106] However, "mere[] . . . inconsistency between a state rule and a Commission regulation under section 251" is not a sufficient basis for the Commission to preempt the state rule. *Iowa Utils. Bd.*, 120 F.3d at 807.

[107] *See Geier v. American Honda Motor Co.*, 529 U.S. 861, 877-82 (2000) (finding common-law tort action preempted because it upset federal regulatory scheme designed to promote the installation a variety of passive-restraint systems in automobiles); *see also Lady v. Neal Glaser Marine, Inc.*, 228 F.3d 598, 614 (5th Cir. 2000) (finding state common-law tort action preempted, because it would upset federal agency's determination that current data did not warrant promulgation of a regulation requiring the use of propeller guards), *cert. denied*, 121 S. Ct. 1402 (2001).

interconnection and access obligations. For example, section 261(c) preserves state authority to impose "requirements" that "further competition in the provision of telephone exchange service or exchange access."[108] The 1996 Act also does not expressly state that uniform regulation is, in itself, a goal.[109] Together, these features of the Act could be read to suggest a Congressional judgment that a regulatory regime that includes state-by-state performance reporting requirements in addition to national measurements would be consistent with the goals of the Act.

With respect to BOCs that have received approval to provide in-region, interLATA service, however, the Commission's authority to preempt divergent state performance reporting regimes is arguably stronger. For example, while the Act provides state commissions with primary authority to enforce sections 251 and 252, the Commission is expressly authorized to ensure that BOCs continue to comply with section 271 after receiving approval and to hear complaints that a BOC has violated section 271.[110] Moreover, to the extent that state performance reporting requirements are designed to evaluate a BOC's compliance with the competitive checklist, *cf.* NPRM ¶ 19 n.33 — and thereby to enable states to consult more effectively with the Commission on this issue[111] — the Commission could argue that those

[108] 47 U.S.C. § 261(c); *see id.* § 251(d)(3)(A) ("the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that . . . establishes access and interconnection obligations of local exchange carriers"); *see also id.* § 252(e)(3) ("subject to section 253 . . . nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards"); *id.* § 253(b) ("[n]othing in this section shall affect the ability of a State to impose . . . requirements necessary to . . . ensure the continued quality of telecommunications services").

[109] By contrast, in *Geier*, the Supreme Court noted that Congress intended to subject the automobile industry "to a single, uniform set of federal safety standards." 529 U.S. at 871.

[110] *See* 47 U.S.C. § 271(d)(6).

[111] *See* 47 U.S.C. § 271(d)(2)(B) (requiring the Commission to "consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of [section 271(c)]").

measurements are not "access and interconnection *obligations*" within the state authority preserved by section 251(d)(3)(A).[112] Thus, the Commission could claim sole authority to ensure — through performance reporting and associated penalties — that BOCs do not fall out of compliance with the checklist post-entry.

However, the Commission's legal authority to preempt state performance reporting regimes is not clear in this context either. First, state commissions have required Verizon to make remedy payments based on its performance under state measurements, on the ground that such payments provide Verizon with incentives to comply with the requirements of sections 251 and 271.[113] Such standards, therefore, could be found to be "obligations" under section 251(d)(3)(A). Second, section 601(c)(1) of the 1996 Act provides that the Act "shall not be construed to modify, impair or supersede" state law "unless expressly so provided."[114] Nothing in the Act "expressly provide[s]" that the Commission may preempt state performance measurements that apply to BOCs that are authorized to provide in-region, interLATA services. Third, the fact that section 271 requires the Commission to consult with states in making any determination of compliance with the competitive checklist suggests that states must have a degree of independence from the Commission's rules in determining whether ILECs are

[112] *Id.* § 251(d)(3)(A) (emphasis added). Along similar lines, the Commission could argue that such reporting requirements are not "requirements . . . necessary to further competition," under section 261(c) because they do not require ILECs to grant any greater access or interconnection rights. *See* 47 U.S.C. § 261(c).

[113] Verizon, however, does not agree that either federal or state law authorizes state commissions to require Verizon to make such payments. Instead, the performance assurance plans in the states in which Verizon has received, or is seeking, section 271 approval are voluntary undertakings by Verizon.

[114] 1996 Act § 601(c)(1) (codified at 47 U.S.C. § 152 note).

complying with the requirements of section 271 — if they did not, the Commission could gain little from such consultation.[115]

In sum, Verizon concludes that courts might well reject any attempt by the Commission to preempt state commissions' performance measurements. As a result, instead of clarifying and simplifying ILECs' regulatory obligations, any legally binding national measurements adopted by the Commission would simply add another layer of regulation. *See, e.g.*, NPRM ¶¶ 17-18.

C. A National Measurements Blueprint Should Provide Guidance to State Commissions but Should Not Impose Legally Binding Requirements on LECs

Verizon recognizes that the Commission may conclude that it should not, or that it lacks authority to, adopt national measurements that comply with all four of the principles Verizon has outlined. However, compliance with certain of the principles is essential, if "the potential benefits of national standards" are not to be "outweighed by the likely burdens imposed on carriers and federal and state regulators." *Id.* ¶ 26. This is especially true if the current state performance measurement regimes will co-exist with the national measurements. Therefore, instead of promulgating yet another set of legally binding performance reporting requirements — that would either duplicate existing state measurements or create additional regulatory obligations — the Commission should adopt a national measurements blueprint. These measurements would not impose independent obligations on carriers, but instead would provide guidance to state commissions and to carriers about which aspects of an ILEC's performance the Commission considers to be "vital to competition and [to] enforcement efforts." *Id.* ¶ 33. Such a

[115] Section 271(d)(2)(B) requires the Commission to consult with the relevant state commission "[b]efore making *any* determination under [section 271(d)]," which includes a "determin[ation] that a Bell operating company has ceased to meet any of the conditions required for . . . approval" under section 271(d)(3). 47 U.S.C. § 271(d)(2)(B), (d)(3), (d)(6)(A) (emphasis added).

blueprint would not increase carriers' regulatory burdens and could both streamline the Commission's review of section 271 applications and potentially rationalize and reduce the existing state reporting requirements.

The concept of a national measurements blueprint is consistent with the Commission's previous approach to adopting national performance measurements and standards. In 1996, despite concluding that "incumbent LECs should be required to fulfill some type of reporting requirement," the Commission declined to adopt national requirements and, instead, "encourage[d] the states . . . to adopt reporting requirements."[116] The Commission recognized that "states are best situated to issue specific rules because of their existing knowledge regarding incumbent LEC networks, capabilities, and performance standards in their separate jurisdictions and because of the role they will pay in . . . approving agreements."[117] Two years later, in response to requests from state commissions and CLECs, the Commission proposed "to adopt model performance measures and reporting requirements . . . that are not legally binding," which would "serve as guidelines for state commissions."[118] The creation of guidelines, the Commission explained, was "the most efficient and effective role for the Commission in this area at this time."[119] Among other things, the experience gained "from the development of these model performance measurements and reporting requirements . . . will . . . provide a more informed and comprehensive record upon which to decide whether to adopt national, legally binding rules."[120] *See also* NPRM ¶ 8 n.11. However, the Commission further recognized that

[116] *Local Competition Order*, 11 FCC Rcd at 15657-58, ¶ 311.

[117] *Id.* at 15657, ¶ 310.

[118] *OSS Notice*, 13 FCC Rcd at 12820, ¶ 4.

[119] *Id.*

[120] *Id.*; *accord id.* at 12828-29, ¶ 24.

"adoption of national, legally binding rules may prove unnecessary . . . in light of the states' and carriers' application of the model performance measurements."[121]

Although the *OSS Notice* did not lead to the promulgation of model measurements, the Commission has obtained substantial experience with performance measurements through section 271 proceedings. *See* NPRM ¶¶ 8 & n.11, 9. As those proceedings have demonstrated, state commissions have proved more than capable of developing a "set of comprehensive measures for reporting of performance." *Id.* ¶ 27 n.40.[122] State commissions that have yet to develop measurements also have little need for the Commission's help in this regard, as they have many sets of measurements from which to choose.[123] Instead, the pressing need today is for guidance in reducing the number of measurements, in order to retain only those most critical to competition. As explained above, preemption of the state reporting regimes is the surest way to achieve this end. Absent that, the Commission's identification of those measurements that are "vital to competition and . . . enforcement efforts," without imposing those requirements as legally binding, federal obligations, is the second most salutary course of action. NPRM ¶ 33.

First, even if state commissions did not act promptly to harmonize their existing measurements with a national measurements blueprint, the Commission's guidance could, over time, lead state commissions to eliminate less relevant measurements and to refrain from adopting further measurements. In addition, state commissions that have not yet adopted measurements could use the Commission's list of vital measurements as a basis for choosing among the thousands of existing performance reporting requirements and, thereby, could

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[121] *OSS Notice*, 13 FCC Rcd at 12820, ¶ 4; *accord id.* at 12828-29, ¶ 24.

[122] *See, e.g., Arkansas/Missouri Order* Apps. B & C; *Pennsylvania Order*, 16 FCC Rcd at 17508, App. B; *Connecticut Order*, 16 FCC Rcd at 14186, App. B, 14204, App. C.

[123] *See OSS Notice*, 13 FCC Rcd at 12820, ¶ 4.

"expend fewer resources developing . . . their own set of measurements for critical areas." *Id.* ¶ 17. In both cases, the national measurements blueprint would provide state commissions with a bulwark against CLECs' consistent demands for additional measurements. Similarly, performance standards for the national measurements blueprint set based on the statutory requirement of nondiscriminatory service will give state commissions grounds for rejecting CLEC demands for standards that require ILECs to provide superior service.[124] State commissions, however, would be free to modify these measurements and standards to take account of state-specific differences in "incumbent LEC networks [and] capabilities."[125] Even if adoption of a national measurements blueprint did not result in "harmonization" of the various state reporting requirements, it would not "increase the overall reporting burden on incumbent LECs." NPRM ¶ 17.

Second, regardless of whether state performance measurements converge with the national blueprint, the Commission should rely on its list of measurements in reviewing section 271 applications and post-entry compliance. After identifying the limited set of measurements that are "particularly critical to carriers' ability to compete effectively," the Commission will have no reason to review the other "hundreds of measurements that have been . . . implemented in various state proceedings." *Id.* ¶ 27. This approach not only would "facilitate the Commission's review of compliance with the Act," but also would reduce the regulatory burdens on both BOCs and state commissions. *Id.* ¶ 19. By providing "'bright line' guidance" as to the

[124] *See Texas Order*, 15 FCC Rcd at 18441-42, ¶ 175 (finding Southwestern Bell's performance in returning manual rejects in "an average of five to eight hours provides efficient competing carriers a meaningful opportunity to compete," notwithstanding the "strict five hour standard" that the Texas PUC had set for this measurement); *Kansas/Oklahoma Order*, 16 FCC Rcd at 6304, ¶ 142 (noting that this measurement now had a six-hour standard).

[125] *Local Competition Order*, 11 FCC Rcd at 15657, ¶ 310.

specific measurements it will review in determining checklist compliance, *id.* ¶ 3, the Commission would enable BOCs and state commissions to focus their efforts on those measurements and to avoid being drawn into disputes about measurements with little or no competitive significance.

III. COMMENTS ON THE PROPOSED PERFORMANCE MEASUREMENTS

Pursuant to the Commission's request, Verizon's proposed business rules for and comments on the Commission's proposed measurements, as well as business rules and comments on measurements that Verizon has proposed, appear in Appendix A to these Comments, using the form the Commission provided. *See id.* ¶ 29. Although Verizon will not repeat those comments here, Verizon provides the following summary, as well as responses to questions posed by the Commission that pertain to more than one measurement.

A. The Commission's Proposed Measurements

1. Pre-Ordering: The Commission Should Adopt an OSS Interface Availability Measurement Rather Than an OSS Pre-Order Response Timeliness Measurement

The Commission should not adopt an OSS pre-order interface response timeliness measurement. *See id.* ¶ 36. As explained above, a measurement of OSS interface availability would "more accurately capture an incumbent LEC's pre-ordering performance," because it would provide more competitively significant information about the ability of CLECs to submit the pre-ordering transactions "necessary for competing carriers to market their services . . . as efficiently . . . as the incumbent LEC." *Id.* ¶¶ 35-36. In addition, an OSS interface availability measurement would not be limited to an ILEC's pre-ordering interfaces, and therefore would provide competitively significant information about CLECs' ability to submit ordering and maintenance and repair transactions as well.

2. Ordering: The Commission Should Adopt a Single Order Notifier Timeliness Measurement and a Billing Completion Notifier Measurement Only

The Commission's order notifier timeliness measurement should not be disaggregated into separate measurements of "FOC Timeliness" and "Reject Timeliness." *Id.* ¶ 39. Both firm order confirmations and rejects notify a CLEC that the ILEC has received its order and inform the CLEC as to the current status of that order. In addition, Verizon returns both types of notices through the same systems. Accordingly, there is no reason to set separate performance standards for these notices or otherwise to distinguish between the two.

If the Commission adopts an order completion notifier timeliness measurement, it should not adopt separate measurements for provisioning and billing completion notifiers, because such measurements would be redundant. *See id.* ¶¶ 41-42. As the Commission has explained, billing completion notifiers "inform competitors that all *provisioning and billing* activities . . . are complete";[126] therefore, a separate provisioning completion notifier measurement is unnecessary.

The Commission should not adopt a percentage of jeopardies measurement. *See* NPRM ¶ 43. The Commission has never relied on a jeopardy return performance measurement in any of its section 271 orders.[127] In addition, Verizon's systems (former Bell Atlantic operations) currently cannot report this measurement, nor is Verizon currently required to do so under the guidelines adopted in New York and in other former Bell Atlantic states. *See* NPRM ¶ 44.

[126] *Pennsylvania Order*, 16 FCC Rcd at 17446, ¶ 43 (emphasis added).

[127] *See, e.g.*, *Kansas/Oklahoma Order*, 16 FCC Rcd at 6307, ¶ 148 & n.412 (declining to rely on Southwestern Bell's average jeopardy return time measurement).

3. Provisioning: The Commission Should Adopt a Missed Appointment Measurement and an Installation Quality Measurement Only

As noted above, the percentage on time performance measurement is simply the inverse of the percentage missed installation appointment measurement, and, therefore, the two measurements are entirely duplicative. Whenever an ILEC misses an installation appointment, it will provision an order after the due date, and vice versa. There is no reason for the Commission to require reporting of both of these measurements.

The Commission should not adopt either an average delay days or an open orders in hold status measurement. *See id.* ¶¶ 52, 62. Unless an ILEC misses an appointment (or fails to complete an order on time), there can be no delay days or open orders. Not only is performance on these two measurements highly correlated with the missed appointment (and percentage on time) measurement, but, once an open order is provisioned, the ILEC's performance on that order will also appear in the average delay days measurement, rendering these two measurements duplicative as well.[128] Of these four measurements, the missed appointment (or percentage on time) measurement best captures the competitive significance of ILECs' provisioning performance and is the only one that the Commission should adopt.

Verizon supports the Commission's proposal to adopt an installation quality measurement. *Id.* ¶ 55.[129] This should measure the percentage of orders for which CLECs

[128] Moreover, the Commission has, in a past section 271 proceeding, expressly declined to rely on an open orders in hold status measurement. *See Connecticut Order*, 16 FCC Rcd at 14155-56, ¶ 19.

[129] However, for xDSL loop orders, the installation quality measurement actually reveals CLECs' willingness and proficiency in performing cooperative testing, rather than the quality of the loops themselves. *See Massachusetts Order*, 16 FCC Rcd at 9067-70, ¶¶ 144-146 ("properly conducted acceptance testing could identify some installation quality problems that could be resolved at the time the competitive LEC and Verizon conduct the acceptance test"). Therefore, the Commission should not adopt an installation quality measurement for xDSL loops, or should

submit trouble reports within the first 30 days after installation, with a standard of parity with the ILEC's performance for its retail customers. *See id.* ¶¶ 55-58.

4. Maintenance and Repair: The Commission Should Adopt a Repeat Trouble Report Rate Measurement and a Time To Restore Measurement Only

The Commission should not adopt a trouble report rate measurement. *See id.* ¶ 67. Because CLECs often provide service over the very same facilities that the ILEC had previously used to serve an end user, even if a CLEC's "customers experience more incidents of trouble than the incumbent LEC's end users," *id.*, there is no reason to believe that discrimination on the part of the ILEC, rather than random variation, is the cause. In addition, the trouble report rate measurement is duplicative of the installation quality and repeat trouble report rate measurements, because trouble reports captured in one of the latter two measurements will also appear in the former. *Cf. id.* ¶ 68 n.103. Finally, the Commission has previously found the installation quality and repeat report measurements to be more important gauges of an ILEC's performance than the total trouble report rate.[130]

Verizon supports the Commission's proposal to adopt a repeat trouble report rate measurement. NPRM ¶ 69. Because the goal of the repeat trouble report rate is to measure the quality of ILEC's trouble resolution, *see id.* ¶ 69, this measurement should include only those repeat troubles submitted within 30 days of the closing of a previous trouble, as those are most likely to indicate a problem with the ILEC's initial trouble resolution effort. Subsequent trouble reports on a line, beyond the 30-day period, are most likely due to an unrelated problem.

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suspend reporting requirements for any ILEC that engages in cooperative testing with CLECs before provisioning such loops.

[130] *See New York Order*, 15 FCC Rcd at 4073-74, ¶ 222 & n.711; *Massachusetts Order*, 16 FCC Rcd at 9067, ¶ 143; *OSS Notice*, 13 FCC Rcd at 12854, ¶ 83.

Verizon supports the Commission's proposal to adopt a time to restore measurement. *See id.* ¶ 71. The standard for this measurement, whether measured as an average or a percentage, should be parity with comparable retail products. *See id.* ¶ 72.

B. Verizon's Proposed OSS Interface Availability and Billing Timeliness Measurements

As noted above, Verizon proposes that the Commission replace the proposed OSS pre-order interface response timeliness measurement with an OSS interface availability measurement. In addition, Verizon proposes that the Commission add a billing timeliness measurement, which would capture ILECs' performance in returning CLECs' wholesale bills, to its list of national performance measurements. *See id.* ¶ 28. As the Commission has recognized, "untimely wholesale bills can impede a competitive LEC's ability to compete in many ways."[131] For example, the Commission has stated that untimely wholesale bills "diminish[]" CLECs' "capacity to monitor, predict and adjust expenses and prices in response to competition."[132]

C. Comments on Questions Related to Multiple Measurements

1. Parity Standards Should Be Used for National Measurements When an ILEC Provides a Comparable Retail Product, Service, or Function

At a number of points, the Notice asks whether a parity or a benchmark standard should be used for a measurement. *See, e.g.*, NPRM ¶¶ 36, 38, 51, 54, 58, 64, 68, 90. As explained above, because the 1996 Act requires ILECs to provide nondiscriminatory, rather than superior, service, the appropriate standard for national performance measurements will normally be parity between an ILEC's wholesale performance and its performance in providing analogous retail

[131] *Pennsylvania Order*, 16 FCC Rcd at 17431-32, ¶ 23; *see also OSS Notice*, 13 FCC at 12855, ¶ 88 ("Timely delivery of billing invoices is also necessary so that a competing carrier can have prompt notification of the amount it owes an incumbent LEC for use of the incumbent's services."); *id.* ¶ 90 (proposing a similar performance measurement).

[132] *Pennsylvania Order*, 16 FCC Rcd at 17431-32, ¶ 23.

products, services, and functions. When an ILEC provides a comparable product, service, or function to itself, the Commission has no need to choose a benchmark standard as "a *proxy* for whether access is being provided in substantially the same time and manner."[133] Indeed, given the difficulties involved in adopting a national benchmark that is applicable to all ILECs, the choice of a parity standard, where possible, promotes regulatory efficiency. However, the Commission should not require ILECs to create analogous products, services, or functions where none exist; the attempt to jerry-rig such a product, service, or function will not result in an apt comparison, because it is not actually something that the ILEC provides to itself, its affiliates, or its customers. In such cases, the Commission should adopt benchmark standards and permit carriers and state commissions to seek waivers to allow for state-specific, or LEC-specific, performance standards that more accurately reflect the statutory requirement of nondiscriminatory service.

2. Verification of Customer Not Ready and No Access Situations Should Not Be Required Before Excluding Them from the National Measurements

The Notice seeks comment "on the best way to address Customer Not Ready (CNR) [and] No Access (NA) situations." NPRM ¶ 30. The Commission should not require ILECs to "verif[y]" "CNR situations . . . before excluding them [from] the relevant metrics," nor should "CNR and NA situations . . . be excluded only if verified by the competitive carrier." *Id.* ¶ 50. Verizon's experience is that obtaining verification when a ILEC's service technician personally experiences a CNR or NA situation is not an efficient business practice. First, CLECs are normally not in a position to verify promptly that an end user, a connecting company, or a third party supplier is not ready or that the ILEC's service technician cannot obtain access to the premises. Second, Verizon has found that CLECs often do not provide 1-800 numbers for use in

[133] *New York Order*, 15 FCC Rcd at 3972, ¶ 45 (emphasis added).

verifying such situations or do not adequately staff their lines to enable rapid verification. Third, requiring verification will likely lead ILECs to have their technicians await a response from the CLEC before moving on to the next job, potentially delaying the completion of other customers' orders. Moreover, CLECs will have the incentive to withhold or to refuse verification, thereby likely making the ILEC's reported performance worse and potentially subjecting the ILEC to penalties. If the Commission nevertheless requires verification, it should also require CLECs to report on the following aspects of their performance in verifying CNR and NA situations: the availability of the verification hotline, the speed with which verification information is provided to the ILEC, and the accuracy of the verification information. In addition, because CLECs are responsible for arranging access, the Commission must establish limits on the amount of time an ILEC service technician is required to wait for the CLEC both to answer its hotline and to provide verification of the CNR or NA situation.

3. The National Measurements Should Exclude Trouble Reports That Are Closed to Found OK, Test OK, and Customer Premises Equipment Disposition Codes

The Notice seeks comment on exclusions for troubles reported by the CLEC where a trouble condition was not found or where customer premises equipment is the source of the trouble. *See* NPRM ¶¶ 30, 56-57, 68, 70. The purpose of the installation quality and trouble report rate measurements would not be served by including such trouble reports. When no trouble is found in the ILEC's network, it is the quality of the CLEC's investigation of troubles before reporting them to the ILEC that is revealed, not the quality of services or facilities that the ILEC provides.

4. CLEC Orders Should Be Tracked on an Order-by-Order Basis

The Commission seeks comment "on whether each circuit should be counted as a separate order, even if multiple circuits are ordered at the same time, and even if the incumbent

LEC breaks the service request into separate internal orders." *Id.* ¶ 31. When multiple circuits are ordered at the same time, the national measurements should treat those circuits as a single order, not as multiple orders. For example, the due date confirmed for a particular circuit, whether ordered by a retail or wholesale customer, normally depends on the number of circuits contained on the order. Thus, a circuit ordered individually will normally have a shorter provisioning interval than a circuit that is one of 20 on a single order. Similarly, some orders have different requirements based on the number of circuits ordered, such as the requirement of a facility check for larger orders. Furthermore, consistent with generally accepted business practices, Verizon currently tracks its retail and wholesale provisioning performance on an order-by-order basis;[134] it would be extremely costly to convert its systems to report its performance on a circuit-by-circuit basis. Finally, the provisioning performance measurements to which Verizon is currently subject count an order as having been missed if, for example, even one of the 20 ordered lines is not installed on time, notwithstanding the fact that the other 19 lines were provisioned on time.

IV. THE IMPLEMENTATION OF NATIONAL PERFORMANCE MEASUREMENTS: REPORTING PROCEDURES, PERFORMANCE EVALUATION, AND STATISTICAL ISSUES

A. Implementation

1. The Commission Should Not Attach Penalties to Data Validation and Should Make Only Limited Use of Audits

Verizon currently stores the raw data underlying the performance reports it produces in "a secure, stable, and auditable" manner, as numerous independent, third-party tests have

[134] Verizon, however, tracks its maintenance and repair performance on a circuit-by-circuit basis.

validated. NPRM ¶ 73.[135] Verizon agrees that raw data should be stored in this manner. However, the Commission should not require all the "raw data underlying a performance measurement" to be stored in a single file. NPRM ¶ 73. By definition, raw data is created in the course of processing and provisioning CLEC orders. The raw data needed to report a particular performance measurement, therefore, may be spread across various systems. In addition, the sheer volume of the data involved prevents inclusion of all the data in a single file.

In order to "minimize potential disputes over the accuracy and validity of the collected data," the Commission should require all LECs to store their raw data for a reasonable period of time, such as three years. NPRM ¶ 73. This will facilitate the reconciliation of raw data in the event it is necessary. However, the past five years of performance reporting does not reveal the need for penalties to ensure that raw data is captured correctly and completely. *See id.* In any event, if such penalties are adopted, they should apply to CLECs as well as ILECs.

There is also no reason for the Commission to penalize carriers in the event that inaccuracies in the reported data are detected. *See id.* Although Verizon strives for perfection, the processes required to convert raw data into performance results are tremendously complex and implementation of performance measurements is an iterative process that will never be "final." Changes to those processes are required for numerous reasons, such as to respond to state commission orders, to ensure that a new product or service is appropriately captured in existing measurements, and to address administrative issues, such as file name changes.

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[135] *See, e.g.*, KPMG, Final Report, *Verizon New Jersey Inc. OSS Evaluation Project* at 361-84 (Oct. 12, 2001) (satisfying 100 percent of applicable test points); KPMG Consulting, *Bell Atlantic OSS Evaluation Project: Final Report* at 649-59 (Sept. 7, 2000) (satisfying 100 percent of applicable test points). In order to report performance measurements, Verizon extracts the required fields from the information generated in the course of handling wholesale and retail orders and transactions, and creates separate data files containing this extracted raw data, which are stored as described above.

Although such a complex process is necessarily susceptible to inadvertent error, Verizon's experience is that such errors normally do not materially affect the reported data. Even if they had material effects, inadvertent errors would be equally likely to increase as to decrease the reported quality of a LEC's performance; therefore LECs' have sufficient incentive to correct such errors without the requirement of any penalties.

The most effective way for the Commission to "ensure the valid and accurate implementation of any business rules . . . exclusions . . . and calculations" under the national measurements is to require LECs to provide other carriers with access to the data used to calculate the performance results. *Id.*; *see also id.* ¶ 74. Other carriers could then determine whether the business rules for measurements were applied properly. Additionally, auditing would provide further confidence that the algorithms used to calculate performance results correctly apply the business rules. *See id.* ¶ 74. Again, however, any such audits should apply to both ILECs and CLECs — "confidence in the accuracy and validity" of CLECs' data is also important in reviewing any complaints raised about ILECs' reported results. *Id.*

To the extent audits are required, they should be conducted by a neutral third party. *See id.* However, the purpose of any such audits should be to ensure that the business rules for performance measurements are being implemented and applied correctly. They should not be used to compare "the incumbent LECs' records with the records of the affected competitors," as this is not a "minimally burdensome" undertaking. *Id.* Order-by-order data reconciliation is costly and time-consuming, and for that reason has not been part of state commissions' OSS tests. In addition, as noted above, Verizon provides CLECs with the data for their transactions and orders, permitting them to engage in data reconciliation to whatever extent they desire.

If the Commission requires audits, Verizon proposes that the initial audit occur one year after a carrier fully implements the national performance measurements.[136] There should be no further audits for a LEC that satisfies this initial audit, unless a carrier can demonstrate that the LEC is no longer correctly implementing and applying the business rules. *See* NPRM ¶ 74. In any event, audits should never occur more frequently than every other year.

2. The Commission Should Not Establish a National Workshop

Verizon agrees, based on its experiences in developing measurements in various states, that collaborative processes are useful for the refinement of performance measurements. *See id.* ¶ 75; *see also id.* ¶ 20. However, Verizon does not support the creation of a national workshop to "develop[] and refine[] [national measurements] based on general guidance from the Commission." *Id.* ¶ 75. Instead, if there are to be national measurements, the specific set of measurements should be promulgated by the Commission. Not only would any national workshop be impractical in light of the likely number of participants and the resulting size of the group, but it would also be virtually impossible for the various parties to reach consensus on the content of the measurements. Given the vast differences between the measurements that currently apply to Verizon, Southwestern Bell, Pacific Bell, Ameritech, BellSouth, and Qwest — not to mention all of the other ILECs — there is little chance of those carriers, the CLECs, and the state commissions agreeing on measurements based only on "general guidance" from the Commission. Instead, such a workshop would simply postpone the point at which the Commission must define the content of the national measurements.

[136] As explained above, the national measurements should be phased in over a number of months, although LECs should have the option of reporting their performance under particular measurements as soon as they are able. *See supra* p. 36.

If the Commission nonetheless decides to promulgate the initial set of measurements as "interim measures to take effect during [a] workshop," then no penalties should apply until the measurements become final. *Id.* ¶ 76. Verizon proposes a time limit of one year for such a workshop to reach, or fail to reach, consensus on the content of final measurements. *See id.* Whether in its role as coordinator of such a workshop or as adjudicator of the various disputes that are sure to arise, the Commission must not allow a collaborative forum to become a means for CLECs to undermine the Commission's goal of measuring those aspects of performance most critical to competition without increasing carriers' regulatory burdens.

3. National Measurements Should Sunset No Later Than Two Years After Full Implementation

Verizon proposes that the national measurements be subject to review, in order to "ensure that the critical measures [adopted] . . . remain relevant and to ensure that only the most essential measurements are retained." *Id.* ¶ 28. If the Commission "declines to organize workshops," as it should, then Verizon proposes that there be "automatic periodic review[s]" of the measurements annually. *Id.* ¶¶ 76-77. Experience has shown that biennial or triennial review is insufficient and results in carriers being required to report their performance under measurements that all carriers agree are flawed or irrelevant. Not only is requiring the reporting of flawed or irrelevant measurements unduly burdensome, but it would also be contrary to the Act to require LECs to pay penalties based on their reported performance results under such measurements.

Verizon supports the proposal that the Common Carrier Bureau carry out these periodic reviews. *See id.* ¶ 77. In addition, the Common Carrier Bureau should be delegated authority to consider any waiver requests filed by LECs or state commissions to modify business rules and standards to account for state- or LEC-specific differences that render the national measurements inconsistent with the statutory requirement of nondiscriminatory service. Finally, the Common

Carrier Bureau should have the authority to suspend reporting requirements and penalties for the failure to meet performance standards if it determines, in the course of a periodic review or through consideration of a waiver request submitted between reviews, that a measurement is flawed. However, only the Commission should have the authority to create additional performance measurements and reporting requirements or to increase penalty amounts.[137]

Verizon also supports the Commission's proposal that, "at such time as the facilities and services discussed herein are routinely provisioned in a nondiscriminatory and just and reasonable manner, the Commission will suspend any reporting requirements that have become unnecessary." NPRM ¶ 78. As Verizon explained above, once an ILEC demonstrates that it routinely provides service that complies with the requirements of the statute, the burdens imposed by reporting will exceed any benefits. For that reason, the Commission, or the Common Carrier Bureau, also should immediately suspend reporting requirements for any ILEC that can demonstrate, based on existing state performance measurements that are analogous to one or more of the national measurements, that it has routinely provided the measured products or services in a nondiscriminatory and just and reasonable manner.

In addition, Verizon proposes that the Commission adopt a sunset date of two years after a carrier fully implements the national performance measurements. *See id.* ¶ 79. At that point, all reporting requirements and penalties under the national measurements should sunset for all LECs, absent further Commission action. Verizon opposes any proposal to apply a different sunset date to BOCs. *See id.* However, if the Commission decides to adopt a special sunset date for BOCs, Verizon proposes that it be consistent with the three-year sunset provision in section 272(f)(1) of the Act.

[137] *See* 47 C.F.R. § 0.291(g).

B. Reporting Procedures Should Apply to All LECs

As explained above, all LECs should be responsible for reporting performance data under the national measurements. *See id.* ¶ 80. However, CLEC-collected and -reported data should not be used to determine ILECs' performance results. *See id.*; *see also id.* ¶ 73 n.112 ("any data submitted by incumbent LECs should be presumed accurate"). Instead, CLEC data should be used to review the CLEC's performance, to facilitate the resolution of any disputes about the calculated results, and to provide meaningful context about the competitive significance of ILECs' reported results.

Verizon's experience has been that CLECs normally do not maintain comprehensive performance data and that they often do not share their data with Verizon willingly. *See* NPRM ¶ 80.[138] For example, in the course of Verizon's section 271 application for New York, the Commission found that, although a number of carriers challenged Verizon's hot cut performance, all but one of those carriers provided only "conclusory and anecdotal" statements.[139] Although AT&T provided its own data with respect to Verizon's hot cut performance, the New York PSC concluded that "the striking discrepancy between the AT&T data and the Bell Atlantic-NY data was explained primarily by AT&T errors or idiosyncratic operational definitions of measurement terms."[140] Likewise, when the Massachusetts Department of Telecommunications and Energy ("DTE") engaged in a reconciliation of AT&T's

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[138] *See, e.g.*, Williams Supp. Decl. ¶ 26; Comments of Covad Communications Co. at 2-3, *Application by Verizon New York, Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Connecticut*, CC Docket No. 01-100 (FCC filed May 14, 2001).

[139] *New York Order*, 15 FCC Rcd at 4106-07, ¶ 295.

[140] Reply Comments of the New York Public Service Commission at 27, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295 (FCC filed Nov. 8, 1999); *see also id.* at 29-30.

and Verizon's hot cut data, it found that AT&T had shown that Verizon had mis-scored data in only one-sixth of the cases "where AT&T itself claimed that its own data were 'absolutely clear and unambiguous,'" making it "likely that there would be a much lower percentage, if any, of mis-scored orders where AT&T's records 'were at all unclear.'"[141]

As Verizon has explained above, it plans to spend more than $28 million in 2001 and 2002 to develop a data warehouse, and already has spent tens of millions of dollars more on audits and third-party OSS tests to demonstrate its compliance with various state and federal performance reporting requirements. Although there are significant up-front costs in implementing new measurements — given the need to develop processes for creating or for capturing the necessary data — there are also significant recurring costs in terms of maintaining the systems that capture and store data, transforming the raw data into performance results, producing the performance reports, and engaging in quality assurance reviews. *See* NPRM ¶ 81. These include the approximately $13 million in annual salaries that Verizon pays to the more than 150 employees who are responsible for Verizon's performance measurement reporting. As explained above, unless the total number of reporting requirements are dramatically reduced, there are limited opportunities for long-run savings from the harmonization of state and federal measurements. *See id.*

The Commission's concerns about the possible incentive effects of establishing provisioning intervals, *see id.* ¶ 82, provide strong support for Verizon's proposal that the Commission adopt parity standards, rather than benchmarks, where the ILEC currently provides

[141] Evaluation of the Massachusetts Department of Energy and Telecommunications at 287, *Application by Verizon New England Inc., et al. for Authorization Under Section 271 of the Telecommunications Act To Provide In-Region, InterLATA Service in Massachusetts*, CC Docket 00-176 (FCC filed Oct. 16, 2000); *see also Massachusetts Order*, 16 FCC Rcd at 9077-78, ¶ 160 & n.502.

an analogous service to its retail customers. A parity standard encourages the ILEC to provision a CLEC order in the same time and manner as a comparable retail order, as the statute requires. By contrast, adopting a specific provisioning interval for a particular product can, as the Commission notes, allow an ILEC to provide slower service to CLECs, if the ILEC is currently provisioning the comparable retail product more quickly than the interval. *See id.* However, a specific provisioning interval can also require superior service, contrary to the terms of the 1996 Act, if the ILEC currently takes more time to provision the comparable retail product. The Commission must recognize that national performance measurements can have incentive effects in both directions. Thus, if the Commission requires ILECs to report their performance on a number of competitively insignificant products and attaches high penalties for failure to meet the standards it establishes, then ILECs will be encouraged to prioritize their performance on these competitively insignificant orders, potentially at the expense of orders that are far more important to competition and to consumers.

Further, the Commission's concern that "requiring performance reports for certain measurements may prompt an incumbent to discriminate in other categories" is misplaced. *Id.* As explained above, in order for an ILEC to discriminate in a manner that causes customers not to choose a CLEC as their service provider, the ILEC would have to take actions that are easily discoverable. Indeed, if such actions were blatant enough to affect consumers' behavior, it is difficult to imagine they would escape notice of state and federal regulators. Finally, the severe penalties that an ILEC would face for engaging in such intentional discrimination provide more than sufficient disincentive, even in the absence of any national reporting requirements.

Although Verizon does not object to the adoption of "measurements for which there would be . . . no associated . . . penalty for poor performance," *id.*, any such measurements must

be among those most critical to carriers' ability to compete effectively. The regulatory burdens of collecting and reporting performance data are incurred regardless of whether penalties are attached to a measurement. Therefore, the Commission should not weaken the requirement that national measurements consist of only the "most essential" measurements simply because it will not be attaching penalties to some of the measurements. *Id.* ¶ 28. However, Verizon opposes any requirement that it "collect data on a broader group of measures and thus retain the ability to report different measurements should the need arise." *Id.* ¶ 85. The burdens of requiring data collection on measurements that the Commission admits are not now, and may never be, essential to competition clearly outweigh the remote possibility of future benefits.

Verizon proposes that the appropriate geographic level of reporting is by state or, where an ILEC's OSS are the same throughout multiple states, by multi-state region. *See id.* ¶ 83. For example, the OSS interface availability measurement developed by the New York PSC requires Verizon to report on the availability of its interfaces for seven states — Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont — in the aggregate. The Commission should not require reporting for smaller areas within states.[142] The geographically disaggregated reports that Verizon has been required to provide in certain states have not proven sufficiently beneficial to justify the added performance reporting costs.

The performance reports that an ILEC submits under the national measurements should contain, for parity measurements, its wholesale performance for CLECs in the aggregate and its performance for the retail comparison group, which might be its performance for an affiliate. *See id.* ¶ 84. For example, the New York Guidelines currently use Verizon's performance for its

[142] *See Arkansas/Missouri Order* ¶ 108 ("Indeed, a performance metric based upon statewide provisioning may provide a more accurate picture of BOC compliance with section 271.").

advanced services affiliate as the retail comparison group for CLEC line sharing orders.[143] In order to preserve the confidentiality of individual CLECs' and ILEC affiliates' data, the ILEC's reports should not contain CLEC-specific or affiliate-specific information, except where ILEC's performance for the affiliate is used for the retail comparison group. *See id.* ¶ 84 n.115.[144] The performance reports that CLECs submit should include their performance, with the number of observations redacted to preserve confidentiality.

The performance reports should contain data analysis and statistical scores, which will reduce the burden on state and federal regulators in reviewing the reports. *See* NPRM ¶ 85. Submitting the underlying data needed for statistical testing, especially the order-by-order data required for appropriate statistical testing for measurements with small sample sizes, is unduly burdensome. *See id.* Verizon is not opposed to making the underlying data, redacted as necessary to maintain confidentiality, available through a website or in other electronic form, if requested by a CLEC or state commission.

An ILEC should be required to provide reports under the national measurements to CLECs that obtain services from it and to state commissions in jurisdictions in which it operates, only if those CLECs or state commissions request the reports. *See id.* ¶¶ 86, 88. If CLECs or state commissions do not want the reports, there is no reason to require ILECs to undertake the

[143] However, on September 26, 2001, the Commission granted Verizon's request to accelerate Verizon's right under the *Bell Atlantic/GTE Merger Order* to provide advanced services without using its separate data affiliate. *See* Order, *Application of GTE Corporation and Bell Atlantic Corporation For Consent to Transfer Control of Domestic and International Section 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, DA 01-2203 (FCC rel. Sept. 26, 2001); *see also* Letter from Carol E. Mattey, FCC, to Jeff Ward, Verizon, DA 02-13 (Jan. 8, 2001). Verizon is currently in the process of reintegrating VADI into the core company, as a separate division.

[144] Even then, the number of observations for ILEC affiliates, or for retail divisions that provide competitive services, should be treated as confidential.

task of providing them. For the same reason, an ILEC should be required to submit CLEC-specific data to the Commission, the relevant state commissions, or the appropriate CLEC only upon request, given the burdens entailed in redacting such reports for public dissemination. The same rule should apply to the performance reports CLECs provide.

Assuming national measurements do not supplant the existing state measurements, performance reports should be submitted quarterly, to minimize the additional burdens imposed on ILECs. *See id.* ¶ 87. Otherwise, Verizon does not object to monthly reporting. In either case, reports should be provided in electronic format, using a program such as Microsoft Excel. Verizon supports the Commission's proposal to make CLEC-aggregate performance reports available on the web.

C. The Commission Should Employ Statistical Analysis To Ensure That Carriers Are Not Penalized for Disparities in Reported Performance Due to Random Variation

Verizon agrees that statistical analysis is essential to "reveal the likelihood that reported differences in an incumbent LEC's performance toward its retail customers and competitive carriers are due to underlying differences in behavior rather than random chance." *Id.* ¶ 89. For parity measurements, Verizon supports the use of the statistical tests discussed by the Commission in Appendix B of its *New York Order*, namely the modified z-test and the t-test for measurements with large sample sizes and permutation testing for measurements with small sample sizes, using a 95-percent confidence level. *See id.* ¶ 89 n.120.[145] As the Commission

[145] *See New York Order*, 15 FCC Rcd at 4185, App. B, ¶¶ 7-8 & n.17, 4186-87, ¶¶ 10-11; *see also OSS Notice*, 13 FCC Rcd at 12896-98, App. B, ¶¶ 1-5. Verizon would also support the use of permutation or exact testing for parity measurements of counted variables, such as proportions, with large sample sizes. Considerable work is currently underway in the New York Carrier Working Group to investigate the use of permutation testing methodologies.

concluded, these are "reasonable tests for statistical significance."[146] For benchmark measurements, Verizon does not believe statistical analysis should be done.[147] If the number of CLEC observations is sufficiently large, then the reported performance should be compared to the benchmark. However, for smaller sample sizes, a single miss will result in a failure to meet most benchmark standards. For example, if the benchmark is 95 percent and there are only 12 CLEC orders in a particular month, even one miss will prevent an ILEC from meeting the standard. Therefore, Verizon proposes that the Commission use small sample size tables, similar to those found in Appendix D of Verizon's Rhode Island Performance Assurance Plan.[148]

To the extent that parity measurements are disaggregated by product, interface, or geography, Verizon proposes that statistical significance be assessed using a single, aggregate test statistic. As explained above, measurements should be disaggregated only when necessary to provide more appropriate parity comparisons. Thus, for the trouble report rate measurement, Verizon proposes that the Commission disaggregate the measurement by loop troubles and by two groups of central office troubles. To calculate the aggregate test statistic, statistical scores would be calculated for each of the submeasurements, using the appropriate statistical test, as described above. A weighted average would then be calculated for the statistical scores for the three submeasurements, providing the aggregate statistic, which would be assessed using a 95-percent confidence level.[149]

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[146] *New York Order*, 15 FCC Rcd at 4188-89, App. B, ¶ 13.

[147] Verizon's comments on the preferred use of parity rather than benchmark standards are found above in section III.C.1. *See* NPRM ¶ 90.

[148] Appendix B to these comments contains proposed small sample size tables.

[149] The statistical scores for the submeasurements would be weighted by the number of transactions for each submeasurement.

Furthermore, if the Commission decides to test for parity using a 95-percent confidence level, this leaves a 5-percent chance that an ILEC will be required to pay penalties when the apparent performance disparity is actually the result of random variation (known as Type I error).[150] Even though each individual test has only a 5-percent error rate, the overall error rate for a group of tests increases with the number of tested measurements. For example, if Verizon's performance is assessed using 10 parity measurements, there is a more than 40-percent chance that there will be at least one Type I error, even when Verizon is actually providing CLECs with parity service.[151] Therefore, the Commission should use a mechanism to correct for the overall Type I error rate, as in the performance assurance plans approved in Texas and the other Southwestern Bell states.[152] Verizon proposes that the Commission adopt the following "K-factor" methodology, which is designed to account for this multiple testing problem by reducing the chance that an ILEC will face penalties for Type I error to 5 percent, overall.[153] The K-factor achieves this by having penalties apply only when the probability that a given number of misses

[150] *See New York Order*, 15 FCC Rcd at 4185-86, App. B, ¶ 9.

[151] For this reason, the Commission has previously recognized that, even if performance standards are set consistent with the statutory requirement of nondiscriminatory service, it "would be *unreasonable* to expect a particular performance metric to always show *ex post* equal or better performance for service to a [CLEC], compared to that provided to the incumbent LEC's customers." *Id.* at 4182, App. B, ¶ 2 n.2 (emphasis added).

[152] AT&T also proposed such a mechanism in its comments in response to the Commission's *OSS Notice*. *See* AT&T Comments at 55-57 & Att. G, ¶¶ 30-34, *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, CC Docket No. 98-56 (FCC filed June 1, 1998).

[153] A proposed K-table table is included in Appendix B to these comments. The K-table is not meant to apply where a ILEC's performance results fail a parity test for three or more months. (The probability that three consecutive failures on a given test are due to random variation is approximately 0.01 percent.) In cases where an ILEC has missed a parity measurement for three or more consecutive months, that measurement would be excluded from the determination of the number of measurements tested when applying the "K-factor."

was due to random variation is less than 5 percent, which means it is very unlikely that the misses are due to random variation. When 10 parity measurements are tested, this condition is satisfied only when an ILEC misses 3 or more measurements;[154] therefore, in this example, application of the K-factor results in the ILEC not being required to pay penalties on the 2 least severe misses.

Finally, there is no need for the Commission to take additional steps to address Type II error, which occurs when a statistical test shows that performance is in parity when, in reality, performance is out of parity. The Commission has previously recognized that adopting a 95-percent confidence level appropriately limits both Type I and Type II error.[155] AT&T has also argued in favor of this approach, explaining that a 95-percent confidence level "controls the frequency of false parity rejections at 5% while making the probability of Type II errors small for violations that are of substantial size."[156] Moreover, the probability of Type II errors is greatest when the absolute difference between an ILEC's performance for CLECs and for the retail comparison group is small. Yet, when differences in performance are small, there is little potential for competitive harm to CLECs from any disparity.[157] Put another way, when actual performance approaches parity in fact, the alleged harm to CLECs from Type II error is least

[154] Although the probability that an ILEC will miss at least 1 of 10 parity tests due to random variation is more than 40 percent, the probability that the ILEC will miss exactly 2 of the 10 parity tests due to random variation is nearly 7.5 percent, while there is only a slightly more than 1.15-percent chance that 3 or more misses are due to random variation. *See* Appendix B.

[155] *See New York Order*, 15 FCC Rcd at 4190, App. B, ¶ 17.

[156] AT&T Comments at 54.

[157] *See, e.g.*, *Connecticut Order*, 16 FCC Rcd at 14153, ¶ 12 ("Isolated cases of performance disparity, especially when the margin of disparity or the number of instances measured is small, will generally not result in a finding of checklist noncompliance.").

likely to occur. Therefore, there is no point in engaging in complicated efforts to address a statistical issue that has no actual competitive consequences.

V. OTHER ISSUES

A. ALTS' So-Called Petition for Declaratory Ruling Should Be Denied

The Commission requests comment on three issues raised by ALTS in a petition for declaratory ruling: that the Commission "ensure that DS1- and DS3-level loops are provided to requesting carriers on a nondiscriminatory basis; . . . adopt maximum intervals for the provisioning of UNE loops; and . . . consider federal penalties for failure to comply with these rules." NPRM ¶ 11. Verizon hereby incorporates by reference its prior comments opposing ALTS's requests with respect to these issues.[158] In addition, Verizon incorporates by reference its argument that ALTS's so-called petition for declaratory ruling is procedurally improper, because it seeks the establishment of new rules rather than the clarification of existing rules.[159]

Finally, the Commission should not adopt performance measurements for UNE DS1- and DS3-level loops because the low CLEC order volumes for these loops demonstrates that they are not among the "core set of performance measurements" that are "particularly critical to carriers' ability to compete effectively." NPRM ¶¶ 25, 27. For the same reason, the Commission should not impose penalties based on ILECs' provisioning of UNE DS1- and DS3-level loops.

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[158] *See* Comments of Bell Atlantic at 4-11, 15-17, *Deployment of Wireline Services Offering Advanced Telecommunications Capability, et al.*, CC Docket Nos. 98-147, *et al.* (FCC filed June 23, 2000) ("Bell Atlantic Comments"); Reply Comments of Verizon Telephone Companies at 2-6, *Deployment of Wireline Services Offering Advanced Telecommunications Capability, et al.*, CC Docket Nos. 98-147, *et al.* (FCC filed July 10, 2000).

[159] *See* Bell Atlantic Comments at 3-4.

B. The Commission's Collocation Provisioning Interval Should Be Extended, Not Reduced

The Commission also seeks further comment on the question whether and how the 90-calendar-day interval for provisioning physical collocation arrangements should be modified. *See id.* ¶¶ 12-13. Verizon hereby incorporates its prior comments opposing both the 90-calendar-day interval and any action to shorten that interval.[160]

[160] *See* Comments of the Verizon Telephone Companies at 21-23, *Deployment of Wireline Services Offering Advanced Telecommunications Capability, et al.*, CC Docket Nos. 98-147, *et al.* (FCC filed Oct. 12, 2000); Reply Comments of the Verizon Telephone Companies at 16-18, *Deployment of Wireline Services Offering Advanced Telecommunications Capability, et al.*, CC Docket Nos. 98-147, *et al.* (FCC filed Nov. 14, 2000); *see also* Verizon Petition for Reconsideration at 21-23, *Deployment of Wireline Services Offering Advanced Telecommunications Capability, et al.*, CC Docket Nos. 98-147, *et al.* (FCC filed Oct. 10, 2000); Reply to Oppositions to Verizon Petition for Reconsideration at 1-6, *Deployment of Wireline Services Offering Advanced Telecommunications Capability, et al.*, CC Docket Nos. 98-147, *et al.* (FCC filed Nov. 13, 2000).

CONCLUSION

The Commission should adopt national performance measurements consistent with the proposals made and the principles outlined in these comments.

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January 22, 2002

APPENDIX A

COMMENTS ON THE COMMISSION'S PROPOSED NATIONAL PERFORMANCE MEASUREMENTS

Metric Number:	**Name:**
1	OSS Pre-Order Interface Response Timeliness

Definition:

This metric measures the response time of the OSS Pre-Ordering Interfaces.

Response Time: Response time is the amount of time for the Pre-Order transactions. For CLEC transactions, this is measured from receipt of the request at the ILEC's interface to the time that the response (or an error message for a rejected query) is sent to the CLEC. For ILEC retail transactions, performance is measured between the issuance of a Pre-Ordering query and the successful receipt of the requested information in a specific field and screen. To the extent that ILECs do not measure actual pre-ordering response times, simulated response times may be used instead.

Rejected Query: A rejected query is a query that cannot be processed successfully due to incomplete or invalid information submitted by the sender, which results in an error message back to the sender.

Exclusions:

- Saturday, Sunday, and major, published holidays, as well as weekday hours outside of the ILEC's normal report period
- Queries that time out. A query is considered to time-out when the requested information (or an error message) is not provided within 60 seconds. Time-outs are set at long intervals to ensure that average response times include long response times but do not include queries that will never complete.

Business Rules:

This measurement is derived from actual production transactions for CLEC transactions and from actual or simulated retail transactions.

For simulated transactions, the ILEC will replicate the keystrokes a service representative would enter for a valid pre-ordering inquiry transaction, and measure the response time from when the ENTER key is hit until a response from the Pre-Ordering OSS is received back on the display screen. At least 10 retail simulated queries will be generated per hour for each type of query. The total number of simulated queries depends on the average response times.

Data are reported based on transactions occurring Monday through Friday, during the normal reporting period, ***excluding*** major, published holidays.

Levels of Disaggregation:

Pre-Ordering Interface: EDI

Transactions: Combined average response time for the following transactions: Customer Service Record, Address Validation, Product & Service Availability, Telephone Number Availability / Reservation, and Due Date Availability.

Calculation:	**Report Structure/Geography:**
∑ Response Times for each transaction divided by the Number of (Simulated) Transactions for each transaction type	By interface geography

Benchmark/Parity Performance Standard:
Parity with Retail plus not more than six (6) seconds. The six (6) second difference allows for variations in functionality and additional security requirements of interface. Parity with retail is the time it takes for a retail representative to obtain the same information that a transaction provides to a CLEC representative, even if multiple retail transactions are required to obtain the same information provided in a single transaction to a CLEC representative.
Impact on Carriers' Regulatory Burden:
Verizon currently reports its pre-ordering OSS response timeliness according to similar business rules in many states.
CLEC Reporting Requirement:
None

Comments:

The Commission should not adopt an OSS Pre-Order Interface Response Timeliness measurement. Instead, it should adopt a measurement of the availability of ILECs' OSS interfaces. *See* NPRM ¶ 36. The OSS interface availability measurement is more comprehensive because it captures the ability of CLECs to enter ordering and maintenance and repair transactions, as well as pre-ordering queries. In addition, OSS interface availability is a more competitively significant measurement because the availability of an ILEC's OSS interfaces is a prerequisite to the successful completion of any pre-ordering, ordering, or maintenance and repair transaction. Even if an ILEC's pre-order response timeliness is at parity, CLECs' ability to compete effectively can be compromised if those interfaces are available substantially less often for CLECs than for the ILEC. Verizon sets forth a proposed OSS Interface Availability Measurement below.

Metric Number:	**Name:**
Verizon Proposal — 1	OSS Interface Availability
Definition:	
The OSS Interface Availability metric measures the time during which an ILEC's electronic OSS Interfaces are actually available, as a percentage of scheduled availability. Because ILEC and CLEC service representatives obtain information from the same underlying OSS, if a particular OSS is down, it is equally unavailable to both ILEC and CLEC employees. Any difference in availability, therefore, is caused by unavailability of the OSS interface.	
Exclusions:	
The following exclusions apply: ▪ Interface outages outside of prime time hours. Prime time hours are as published or defined on a state-by-state basis ▪ Interface outages reported but not found in the ILEC's systems ▪ Interface outages reported by a CLEC that were not reported to the ILEC's designated trouble reporting center ▪ Scheduled interface outages for major system releases where CLECs were provided with advanced notification of the downtime in compliance with the ILEC's change management process	
Business Rules:	
This metric is reported by combining CLEC reported outages (received via the ILEC's designated trouble reporting center) with outages identified by the ILEC through its own monitoring but not reported by a CLEC. An OSS interface is not considered unavailable if ILEC representatives are also unable to submit transactions because the underlying OSS (or "internal system") is down.	
Levels of Disaggregation:	
All interfaces,[1] combined.	
Calculation:	**Report Structure/Geography:**
(Number of hours scheduled minus the number of scheduled hours not available) divided by (Number of hours scheduled) multiplied by 100	By interface geography. If an interface serves more than one state, the same performance will be reported for all states served by this interface.
Benchmark/Parity Performance Standard:	
99.25 percent	
Impact on Carriers' Regulatory Burden:	
Verizon currently reports its OSS interface availability according to similar business rules in many states.	
CLEC Reporting Requirement:	
None	

[1] For Verizon, interfaces available in a particular state can include EDI, CORBA, Web GUI, and WISE.

Comments:

For the reasons presented above, Verizon believes this is a more meaningful measurement of an ILEC's performance.

There is no need for the OSS Interface Availability measurement to be disaggregated by interface type. Given the performance benchmark proposed for this measurement, it is virtually impossible for an ILEC to mask discriminatory performance on one interface with superior performance on other interfaces. *See* NPRM ¶¶ 27, 34.

Further, because many ILECs use the same interfaces and underlying OSS for multiple states, an outage to such an interface will occur in multiple states. It would be duplicative for national performance measurements to penalize an ILEC more than once for the exact same outage, merely because the ILEC has elected (or been required) to standardize its OSS platforms across multiple states. Accordingly, an ILEC's reporting requirement under this measurement should be based on the geographic coverage of its OSS. For example, because Verizon uses the same interfaces throughout the entire former Bell Atlantic footprint, this measurement would require Verizon to report on the availability of its interfaces for all fourteen states in the aggregate.

Metric Number:	**Name:**
2	Order Notifier Timeliness

Definition:

This metric measures Local Response – Confirmation or Reject Timeliness, as the amount of elapsed time (in hours and minutes) between receipt of a Local Service Request and distribution of Local Response Confirmation or reject.

Exclusions:

- Orders that fail front-end edits (before the order is submitted to the ILEC)
- ILEC Test Orders
- ILEC Affiliate (or separate division) Orders
- Weekend and published holiday hours (other than for flow-through orders)
- Scheduled downtime hours of the service order processor (for flow-through orders)
- Faxed or Mailed Orders

Business Rules:

UNE POTS:

- Flow-Through Orders: two (2) system hours
- Orders with no facility check: 24 hours
- Orders with facility check: 72 hours

UNE Complex Services (requiring Manual Loop Qualification):

- 2-Wire Digital Services: 72 hours
- 2-Wire xDSL Loop: 72 hours
- 2-Wire xDSL Line Sharing/Line Splitting: 72 hours

UNE Special Services:

- Orders with no facility check: 48 hours
- UNE Specials (DS1 and above) received via ASR: 72 hours
- Orders with facility check: five business days

Levels of Disaggregation:

All products and services, listed above, combined.

Calculation:	**Report Structure/Geography:**
(Number of CLEC LSRs/ASRs where the confirmation or reject is sent on time) divided by (Number of CLEC LSRs/ASRs)	By state

Benchmark/Parity Performance Standard:

90 percent on time, according to the schedule above

Impact on Carriers' Regulatory Burden:

Verizon currently reports on the timeliness of its order notifiers according to similar business rules in many states.

CLEC Reporting Requirement:

Average response time for release of CLEC end-user information

Comments:

The Commission should not establish separate measurements for the return of order confirmation notifiers and rejects. Both serve the same purpose — to provide a CLEC with confirmation that the ILEC has received its order and with information on the current status of that order — and, therefore, are of equal importance to CLECs. In addition, Verizon returns both confirmation and reject notifiers through the same systems. Accordingly, national performance measurements should not distinguish between the two. Indeed, the guidelines established by the New York PSC adopt the same timeliness standards for both confirmation and reject notifiers.

Penalties for this measurement should be based only on whether an ILEC does not satisfy the 90-percent on time benchmark. *See* NPRM ¶ 40. This is not only a simple performance standard to administer, but it also provides ILECs with the incentive to return all confirmations and rejects within the timeliness standards, which could vary by state.

Finally, the Commission should require CLECs to report on the average time they take to return Customer Service Records ("CSRs") for their end-user customers. (In effect, these are equivalent to the order confirmations that Verizon provides to a CLEC.) As explained in the text, this information is particularly critical to competition because these CSRs are necessary for a CLEC or an ILEC to be able to compete for end-user customers served by a CLEC.

Metric Number:	**Name:**
3	Billing Completion Notifier Timeliness
Definition:	
The percent of Billing Completion Notifiers (BCNs) sent within two business days of work order completion in the ILEC's service order processing system. The elapsed time begins with the billing completion in the service order processing system of the last service order associated with a specific purchase order number. The BCN is considered sent when the ILEC's system initiates the sending of the completed notifier to the CLEC.	
Exclusions:	
▪ ILEC Test Orders ▪ Orders received manually (fax or e-mail) or through a Web GUI ▪ ILEC Affiliate (or separate division) Orders	
Business Rules:	
See definition, above	
Levels of Disaggregation:	
All UNE Services (UNE Platform, UNE Loop, and UNE xDSL Loop) combined	
Calculation:	**Report Structure/Geography:**
(Number of EDI PONs Completed that produce a BCN within two business days after service order processor provisioning completion update) divided by (Total number of EDI PONs for which the last service order has been updated as provisioning completed in the service order processor in the month)	By state
Benchmark/Parity Performance Standard:	
90 percent within two business days	
Impact on Carriers' Regulatory Burden:	
Verizon currently reports on the timeliness of its billing completion notifiers according to similar business rules in a number of states.	
CLEC Reporting Requirement:	
None	

Comments:

Verizon does not consider order completion notifier timeliness to be among the "core set of performance measurements" that are "particularly critical to carriers' ability to compete effectively." NPRM ¶¶ 25, 27. However, Verizon recognizes that the Commission has "instructed a section 271 applicant to demonstrate that it provides competing carriers with order completion notices in a timely and accurate manner." *New York Order*, 15 FCC Rcd at 4052-53,

¶ 187. Nonetheless, the Commission should not adopt measurements for both provisioning and billing completion notifiers ("BCNs"). *See* NPRM ¶ 41. Such measurements would be duplicative because a billing completion notifer also provides CLECs with notice that provisioning has been completed. As the Commission has explained, billing completion notifiers "inform competitors that *all provisioning and billing activities* necessary to migrate an end user from one carrier to another *are complete* and thus the competitor can begin to bill the customer for service." *Pennsylvania Order*, 16 FCC Rcd at 17446, ¶ 43 (emphases added). For this reason, if the Commission adopts an order completion notifier timeliness measurement, the measurement should be limited to billing completion notifiers. *See* NPRM ¶ 42.

In addition, because they serve this dual role, the Commission has suggested that billing completion notifiers are more competitively significant than provisioning completion notifiers. For example, the Commission has stated that "[p]remature, delayed or missing BCNs can cause competitors to double-bill, fail to bill or lose their customers." *Pennsylvania Order*, 16 FCC Rcd at 17446, ¶ 43; *see also Texas Order*, 15 FCC Rcd at 18579, App. B, ¶ 12 ("While the SOC represents notification that *provisioning* has been completed, it is not a notice that the billing systems . . . have actually been updated."); Memorandum Opinion and Order, *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan*, 12 FCC Rcd 20543, ¶ 200 (1997) ("*Michigan Order*") ("Ameritech explains that in some cases, its billing systems rejected orders for which order completion notices had already been transmitted to the competing carrier.").

In addition, if the Commission adopts such a measurement, Verizon believes that it should be calculated based on the percent of billing completion notifiers returned on time and not as an average interval measurement. *See* NPRM ¶ 42 & n.68. In this case, a percent on time

measurement provides a more meaningful gauge of competitive significance than does an average interval measurement, where a single outlier can have a significant effect on reported performance without having any overall competitive significance.

Finally, if the Commission adopts a provisioning completion notifer timeliness measurement, it should not set a benchmark of one hour for notices that are processed electronically. *See id.* CLECs' orders are due for completion on a particular day, not at a particular time. For this reason, Verizon batch processes service order completions, rather than doing so in real time. Thus, hours are the wrong units for such a measurement.

Metric Number:	**Name:**
4	Percentage of Jeopardies
Definition:	
Exclusions:	
Business Rules:	
Levels of Disaggregation:	
Calculation:	**Report Structure/Geography:**
Benchmark/Parity Performance Standard:	
Impact on Carriers' Regulatory Burden:	
Substantial. Verizon (former Bell Atlantic) does not currently report such a measurement, nor can it currently report a percentage of jeopardies measurement, as described in the NPRM. Verizon would have to undertake a significant amount of reprogramming to implement such a measurement.	
CLEC Reporting Requirement:	

Comments:

The Commission's national performance measurements should not include a percentage of jeopardies measurement. Performance in returning jeopardies is not "relatively easily measured," is not "particularly critical to carriers' ability to compete effectively," and would "increase overall regulatory burdens on carries." NPRM ¶ 27. Indeed, the Commission has never relied on a jeopardy return performance measurement in any of its section 271 orders. *See, e.g.*, *Kansas/Oklahoma Order*, 16 FCC Rcd at 6307, ¶ 148 n.412 (declining to rely on Southwestern Bell's average jeopardy return time measurement). As noted above, Verizon (former Bell Atlantic) does not currently report a percentage of jeopardies measurement, nor can its OSS currently report such a measurement. In fact, the New York PSC recently approved the elimination of the one jeopardy measurement (relating to Enhanced Extended Links) that Verizon had been required to report. That measurement had no associated performance standard.

In any event, no performance measurement should require 100-percent performance; the statutory standard is nondiscriminatory performance, not perfect performance. *See* NPRM ¶ 45 (seeking comment on "whether the Commission should require the incumbent LEC to account for 100 percent of missed committed due dates"). Further, because the ILEC's service technician may not discover that he will be unable to complete a scheduled appointment until late in the day on the due date, any performance measurement that requires jeopardies to be sent by the close of business on the due date or earlier clearly cannot have a 100-percent benchmark. *See id.* For example, a technician's next-to-last job during a day might unexpectedly take twice as long as anticipated, preventing him from reaching the final job of the day and making issuance of a jeopardy notice impossible. Therefore, an ILEC could achieve 100-percent performance only if it issued a jeopardy on every order, just in case it was missed.

Finally, although the Commission could require measurement of the time elapsed between the ILEC's entry of information in its OSS indicating that an order may not be completed by the due date and the time the ILEC sends that information to the CLEC, *see id.*, there is no evidence that ILECs do not make jeopardy information available to CLECs shortly after such information is available.

Metric Number:	**Name:**
5 / 8	Percentage On Time Performance / Missed Appointments

Definition:

This metric measures the Percentage of Orders completed after the commitment date. LNP orders are considered on time when they are completed neither early (premature disconnects) nor late (late triggers). Hot Cut loop orders are by specific appointment.

Exclusions:

- ILEC Test Orders
- ILEC Affiliate (or separate division) Orders will be excluded from the CLEC Aggregate results
- Disconnect Orders
- ILEC Administrative Orders
- Additional Segments on orders (parts of a whole order are included in the whole)
- Orders that are not complete (orders are included in the month that they are completed)
- Suspend for nonpayment and associated restore orders
- LNP orders without office equipment which do not have a trigger order
- Orders missed for facility reasons

Business Rules:

Note: Orders missed solely due to CLEC or customer reasons are not considered to be ILEC missed appointments and are considered completed on time according to the rescheduled appointment or actual completion date if a new date is not scheduled.

Levels of Disaggregation:

Dispatch (combination of UNE Platform, UNE Loop, and UNE xDSL Loop)
No Dispatch (UNE Platform)
LNP/Hot Cut

Calculation:	**Report Structure/Geography:**
(Number of orders where the order completion date is greater than the order due date due to ILEC reasons) divided by (Total number of orders)	By state

Benchmark/Parity Performance Standard:

Dispatch: Parity with retail POTS dispatch, except UNE xDSL Loop (parity with retail DSL line sharing)
No Dispatch: Parity with retail POTS no dispatch
LNP/Hot Cut: not greater than 5 percent

Impact on Carriers' Regulatory Burden:

Verizon currently reports its percent on time and missed appointment performance according to similar business rules in many states.

CLEC Reporting Requirement:

Percentage of appointments missed / orders not completed on time solely due to CLEC or customer reasons

Comments:

Although the Commission lists Percentage On Time Performance and Percentage Missed Appointments as two separate measurements, *see* NPRM ¶¶ 48, 59, they are, in fact, the same measurement. The Commission's proposed Percentage On Time measurement captures "the percentage of competitive LEC orders that were provisioned on or before the scheduled due date." *Id.* ¶ 48. Any time an ILEC provisions an order after the due date, it has also missed an appointment. *Id.* ¶ 59. Although the question whether ILECs are providing CLECs with service on time is an important one, *see id.* ¶ 60, there is no reason for the Commission to require ILECs to report both of these measurements, and even less reason to attach penalties to each measurement.

Measuring an ILEC's performance, as defined above, will not "create an incentive for incumbent LECs to set due dates further into the future so as to mask poor performance." *Id.* ¶ 49. Many state commissions currently monitor the standard intervals ILECs' offer. Therefore, there is no need for the Commission to establish national provisioning completion intervals. *See id.* In addition, because standard intervals for ILECs' retail customers are not uniform nationwide, both across and within companies, the adoption of national provisioning completion intervals would almost certainly result in CLECs receiving service that is superior to what retail customers receive. And, as explained above, the 1996 Act does not require ILECs to provide superior service.

In addition, the Commission should not require verification before customer not ready ("CNR") or no access ("NA") situations are excluded from this measurement. *See* NPRM ¶ 50. As explained above, such a system is impractical, burdensome, and has the potential to impede the completion of other orders. *See supra* section III.C.2. However, if the Commission requires verification before CNR and NA situations can be excluded from a measurement, it should also

require CLECs to report on the following aspects of their performance: the availability of the verification hotline, the speed with which verification information is provided to the ILEC, and the accuracy of the verification information.

In any event, CLECs should be required to report on the percentage of ILEC appointments missed (or orders not completed on time) that are solely due to CLEC or customer reasons. This information can provide useful context for assessing the competitive significance of missed appointments due to ILEC reasons. For example, if 5 percent of a CLEC's orders are missed due to CLEC or customer reasons, then there is little basis to claim that the CLEC was competitively harmed by an ILEC missed appointment rate of 3 percent, even if the ILEC's missed appointment rate for the retail comparison group was only 2 percent.

For this measurement, Verizon proposes an exclusion for orders missed due to facility reasons. The Commission requests comment, "[w]ith respect to this specific measurement, . . . on how 'lack of facilities' should be defined." NPRM ¶ 60. A facility miss can occur if an ILEC, or its service technician, discovers, on or before the due date, that the assigned facility is actually unavailable or is not working properly. The ILEC may then undertake efforts to rearrange facilities — often referred to as a "line and station transfer" — to provide the necessary facilities at the requested location, although this may not be successful. In addition, the ILEC may have anexisting facility improvement project that will provide the necessary facilities to that location. , . Although an ILEC may take these extra steps to attempt to provision CLECs' orders, it is not required to provision orders where no facilities currently exist. These efforts take additional time beyond that normally allocated to the provisioning of an order, often leading an ILEC to "miss" appointments for orders that it could reject, or for which it could request

cancellation, due to a lack of facilities. ILECs' performance under this measurement should not be negatively impacted for undertaking these additional efforts to meet the CLEC's request.

Furthermore, there is no reason to require ILECs to measure the percentage of missed appointments due to lack of facilities independent from missed appointments in general. *See id.* Facility misses are simply one type of missed appointment that is beyond Verizon's control and, for the reasons explained above, they should be excluded from the missed appointment measurement.

The appropriate standard for the Percentage On Time / Missed Appointment measurement is generally parity with retail. Because most of the products listed in the measurement above are provided to both wholesale and retail customers, there is no reason to set a wholesale benchmark that may be higher or lower than retail performance. *See id.* ¶ 51. However, because there are no retail products analogous to LNP and hot cut orders, a benchmark of not more than 5 percent is appropriate.

Metric Number:	**Name:**
6	Average Delay Days on Missed Installation Orders
Definition:	
The average number of business days between the committed due date and the actual work completion date, when work completion is delayed due to actions on the part of the ILEC.	
Exclusions:	
▪ ILEC Test Orders ▪ Disconnect Orders ▪ ILEC Administrative Orders ▪ ILEC Affiliate (or separate division) Orders will be excluded from the CLEC Aggregate ▪ Delay days attributable to customer reasons ▪ Additional Segments on orders (parts of a whole order are included in the whole) ▪ Orders that are not complete (orders are included in the month that they are completed) ▪ Suspend for nonpayment and associated restore orders ▪ LNP orders without office equipment which do not have a trigger order ▪ Orders missed for facility reasons	
Business Rules:	
Note: for any order that contains both an ILEC miss and a CLEC or customer miss, the delay days attributable to the CLEC and/or customer delay are excluded.	
Levels of Disaggregation:	
Combination of UNE Platform, UNE Loop, UNE xDSL Loop	
Calculation:	**Report Structure/Geography:**
(Sum of the completion date minus the due date for orders missed due to ILEC reasons) divided by (Total number of orders missed due to ILEC reasons)	By state
Benchmark/Parity Performance Standard:	
UNE Platform and UNE Loop: Parity with retail POTS UNE xDSL Loop: Parity with Retail Specials DS0	
Impact on Carriers' Regulatory Burden:	
Verizon currently reports average delay days on missed appointments according to similar business rules in many states.	
CLEC Reporting Requirement:	
Average delay days due to CLEC or customer reasons	

Comments:

Verizon does not consider average delay days to be among the "core set of performance measurements" that are "particularly critical to carriers' ability to compete effectively." NPRM ¶¶ 25, 27. First, this measurement is highly dependent on the Percentage On Time Performance / Missed Appointments measurement. Indeed, there can be no delay days unless an ILEC misses

an appointment. Therefore, if an ILEC misses no retail appointments in a given month and misses only one wholesale appointment, it will necessarily miss *both* the missed appointment measurement and the average delay days measurement, rendering the latter measurement entirely duplicative. Second, the competitive significance of the average delay days measurement is highly correlated with the number of missed appointments. For example, if an ILEC misses only 1 of 100 CLEC appointments in a given month, but does not complete that order for 15 days, there is no basis for concluding that the ILEC's performance on that one order was competitively significant. This is especially so if the ILEC missed 3 percent of its retail appointments, even if it missed those appointments by an average of only 5 days.

However, if the Commission adopts an average delay days measurement, it should require CLECs to report on the average delay days due to CLEC or customer reasons. As with the missed appointment measurement, reporting of this information can provide useful context in evaluating the competitive significance of an ILEC's performance, as it enables delay days attributable to the ILEC to be viewed as a percentage of total delay days experienced by CLECs' end user customers.

Proposals to set a benchmark for this measurement — whether a single benchmark of less than or equal to three days or a series of benchmarks, *see id.* ¶ 54 — are misguided. Because ILECs' retail and wholesale provisioning can be compared — and because the 1996 Act requires nondiscriminatory performance, not superior performance — the appropriate standard for an average delay days measurement is parity with comparable retail orders. As suggested above, retail and wholesale orders should be compared, disaggregated by dispatch and no dispatch orders because the provisioning processes for such orders differ significantly. (Because an LNP or hot cut order completed early counts as a missed appointment, such missed appointments

would yield negative average "delay" days, making this measurement inappropriate for such orders.) Moreover, a parity standard is least likely to "have the unintended effect of adversely altering incumbent LEC performance." *Id.* Any benchmark standard will encourage an ILEC to be indifferent to certain lengths of delay — for example, two benchmarks suggested in the NPRM make no distinction between a delay of 6 days and a delay of 10 days. *See id.* By contrast, under a parity standard, every delay day is weighted equally and the ILEC has a uniform incentive to reduce delay days on all wholesale orders.

Finally, the Commission should not require ILECs "to measure the average carrier-requested installation interval compared to the average incumbent LEC offered interval and the actual average installation interval." *Id.* ¶ 52. First, the Commission has, on numerous occasions, recognized the flaws inherent in average installation interval measurements. *See New York Order*, 15 FCC Rcd at 4061-64, ¶¶ 203-205; *Massachusetts Order*, 16 FCC Rcd at 9038-39, ¶ 92. For these reasons, the New York PSC recently approved the consensus recommendation of the New York Carrier Working Group to eliminate the average completion (or installation) interval measurements that Verizon had been required to report. Second, Verizon does not offer intervals to CLECs. CLECs select the due date during the pre-ordering process and, depending on the type of service, can select either the standard interval or the next available appointment using the same scheduling tool as Verizon's retail representatives; CLECs can also select a later appointment, depending on the needs of their customers. Third, a comparison of the average installation interval to the CLEC's requested interval — which is the same as the so-called "offered" interval — is simply an indirect and more burdensome method of measuring delay days.

Metric Number:	**Name:**
7	Installation Quality
Definition:	
This metric measures the percentage of lines/circuits installed where a reported trouble was found in the network within 30 days of order completion.	
Exclusions:	
▪ ILEC Affiliate (or separate division) Orders and troubles will be excluded from the CLEC Aggregate ▪ Subsequent reports (additional customer calls while the trouble is pending) ▪ Troubles closed due to customer action ▪ Customer Premises Equipment (CPE) troubles ▪ Troubles reported on the Order Completion Date ▪ Troubles reported but not found (Found OK and Test OK) ▪ Troubles reported by ILEC employees in the course of performing preventative maintenance, where no customer has reported a trouble	
Business Rules:	
This measurement includes the percentage of lines/circuits installed where a reported trouble was found in the network, whether in the Drop Wire, the Outside Plant (Cable), or the Central Office. Central Office troubles include translation troubles closed automatically by the CLEC.	
Levels of Disaggregation:	
POTS (combination of UNE Platform and UNE Loop)	
Calculation:	**Report Structure/Geography:**
(Number of trouble reports submitted within 30 days of installation activity with trouble found in the network) divided by (Number of lines installed in the calendar month)	By state
Benchmark/Parity Performance Standard:	
Parity with retail POTS	
Impact on Carriers' Regulatory Burden:	
Verizon currently reports on installation quality according to similar business rules in many states.	
CLEC Reporting Requirement:	
None	

Comments:

Experience with the performance measurements developed through the New York Carrier Working Group demonstrates that there is no need to disaggregate this measurement further by requiring reporting of trouble reports submitted within 7 or 10 days. *See* NPRM ¶¶ 55, 57. Such a measurement would be duplicative of the "within 30 days" measurement and, for that reason, the New York PSC recently approved the deletion of the "within 7 days" measurement for UNE

Platform and UNE Loop. As in the New York guidelines, the standard for this measurement should be parity with retail. A benchmark of 1 or 1.5 reports per 100 circuits may require an ILEC to provide wholesale performance that is better than its retail performance, even though the statute requires nondiscriminatory service.

Calculation of the reporting period should be based on the creation date of the trouble ticket. *See id.* ¶ 56. However, trouble reports completed on the day of installation should not be included. *See id.* Retail customers and CLECs often report troubles on the day of installation simply because the work has not yet been completed. Indeed, a line that has not yet been provisioned is not eligible for repair. Therefore, trouble reports on the day of installation are more likely to indicate a missed appointment than a problem with the quality of the installed facilities.

When no trouble is found in the network — that is, in the drop wire, the outside plant (cable), or the central office — the trouble report should not be included in the ILEC's reported rate. *See id.* Additional customer calls made while a trouble is pending should also be excluded, because ILECs have no control over whether a CLEC will initiate multiple trouble reports on the same trouble. *See id.* ¶ 57. Troubles closed due to customer action should be excluded because they likely would have been excluded as "Found OK," "Test OK," or "Customer Premises Equipment" if fully investigated. Troubles identified by the ILEC during the course of performing preventative maintenance should be excluded if that trouble is not also reported by a CLEC, indicating that the CLEC's customer never experienced any trouble on the line. Including any of these troubles would provide CLECs and ILECs with the wrong incentives. CLECs, for example, would have the incentive to submit trouble reports while knowing there is no trouble, to cancel such troubles before investigation is completed, or to submit reports hourly

for the same trouble. ILECs, by contrast, would have less incentive to conduct rigorous preventative maintenance because a trouble might go unidentified by the CLEC and its customer during the 30 days after installation.

Metric Number:	**Name:**
9	Open Orders in Hold Status

Definition:

This metric measures the number of open orders that, at the close of the reporting period, have been in a hold status for more than 90 calendar days, as a percentage of orders completed in the reporting period.

Exclusions:

- ILEC Test Orders
- ILEC Affiliate (or separate division) Orders will be excluded from the CLEC Aggregate
- Disconnect Orders
- ILEC Administrative Orders
- Additional Segments on orders (parts of a whole order are included in the whole).
- Orders that are complete
- Cancelled orders
- Suspend for nonpayment and associated restore orders
- Orders that have passed the committed completion date, or whose completion has been delayed, due to CLEC or end user delay (including ILEC requests for cancellation)
- Orders that, at the request of the CLEC or ILEC Retail customer, have not been assigned a completion date

Business Rules:

An open order is a valid order that has not been completed or cancelled. Open orders in a hold status include:

1. open orders that have passed the originally committed completion date due to ILEC reasons; and,
2. open orders that have not been assigned a completion date due to ILEC reasons.

Measurement of the 90-day interval for open orders that have passed the originally committed completion date due to ILEC reasons will commence with such passed originally committed completion date (passed originally committed completion date = Day 0). Measurement of the 90-day interval for open orders that have not been assigned a completion date due to ILEC reasons will commence with the application date (application date = Day 0).

Levels of Disaggregation:

All UNE Platform, UNE Loop, UNE xDSL Loop orders, combined.

Calculation:	**Report Structure/Geography:**
(Number of open orders that at the close of the reporting period have been in a hold status for more than 90 days) divided by (Total number of orders completed in the reporting period)	By state

Benchmark/Parity Performance Standard:

UNE Platform and UNE Loop: Parity with retail POTS
UNE xDSL Loop: Parity with Retail Specials DS0

Impact on Carriers' Regulatory Burden:

Verizon currently reports on open orders in hold status according to similar business rules in many states.

CLEC Reporting Requirement:
Percentage of all cancellations processed during the reporting period where the cancellation took place after the committed due date

Comments:

Like the average delay days measurement, Verizon does not consider open orders in hold status to be among the "core set of performance measurements" that are "particularly critical to carriers' ability to compete effectively." NPRM ¶¶ 25, 27. First, this measurement is also highly dependent on the Percentage On Time Performance / Missed Appointments measurement. Again, there can be no open orders in a hold status unless an ILEC misses an appointment. Thus, the missed appointment measurement functions as an "alternative measurement[] that [is] more critical in evaluating the incumbent LEC's overall provisioning performance." *Id.* ¶ 64. Second, this measurement is inherently duplicative of *both* the missed appointment and average delay days measurements. Assume that, in February, a particular open order has been in hold status for more than 90 days; this order would appear in an ILEC's performance report for that month and, thus, might well require the ILEC to pay penalties. When the ILEC completes this order in March, that order will appear in both the missed appointment and the average delay days measurements for that month and might well require the ILEC to pay penalties on a total of three measurements for the same missed appointment. Therefore, the Commission's concern that the "orders whose due dates have passed" are "not covered by the Percentage On Time Performance measurement" is misplaced. *See id.* ¶ 62.

In the event that the Commission adopts an open orders in hold status measurement, the Commission should require reporting at a 90-day interval only, as it identifies orders with persistent delays, which are likely more competitively significant. *See id.* ¶ 63.

Further, assuming carriers are required to report their performance on a monthly basis, any interval shorter than 30 calendar days — such as a 10-day interval, *see id.* — will show orders as being in "hold" status simply by virtue of the changed month. For example, assume that the ILEC misses an appointment for an order that was supposed to be provisioned on February 17. If the order is provisioned on February 28, then that order would appear in the percent completed on time / missed appointment measurement and the average delay days measurement, assuming the Commission adopts such a measurement. If there were a 10-day performance standard for open orders and that same order was provisioned on March 1 — a difference of one calendar day — it would appear in the February open orders measurement (as open for more than 10 days) and in the March percent completed on time / missed appointments and average delay days measurements.

The appropriate standard for this measurement is parity with retail. *See id.* ¶ 64. As explained above, because the 1996 Act requires nondiscriminatory performance, there is no reason to set a wholesale benchmark that may be higher or lower than retail performance. Further, the Commission also should not impose penalties in the event an ILEC fails to meet the parity standard. As shown above, penalizing an ILEC for orders in hold status is duplicative, or worse, if the Commission also imposes penalties for failure to meet the percent completed on time / missed appointment measurement and the average delay days measurement.

Finally, Verizon believes it would be "useful[] . . . to report the percentage of all cancellations processed during the reporting period where the cancellation took place after the committed due date." *Id.* Verizon further believes that such data would help "to capture fully the magnitude of any realized discrimination," by revealing the extent, if any, to which CLECs are actually harmed on those relatively rare occasions when Verizon misses appointments. *Id.*

However, it is *CLECs*, not ILECs, that should report these data. The CLECs, after all, are the carriers that would submit any such cancellations; they also would be aware that the cancellation occurred after the committed due date had passed. To the extent that the Commission proposes to require ILECs to report data that are as easily — if not more easily — reported by the CLECs, Verizon opposes this additional reporting requirement as unduly burdensome.

Metric Number:	**Name:**
10	Trouble Report Rate

Definition:

This metric measures the total initial customer direct or referred troubles reported, where the trouble disposition was found to be in the network, per 100 lines/circuits in service.

Exclusions:

- ILEC Affiliate (or separate division) troubles and lines will be excluded from the CLEC aggregate
- Subsequent reports (additional customer calls while the trouble is pending)
- Troubles reported on ILEC official (administrative) lines
- Troubles closed due to customer action
- Troubles reported on the Order Completion Date
- Troubles reported by ILEC employees in the course of performing preventative maintenance, where no customer has reported a trouble
- Customer Premises Equipment (CPE) troubles
- Troubles reported, but not found (Found OK and Test OK)
- Coin / payphone services

Business Rules:

This measurement includes the percentage of lines/circuits installed where a reported trouble was found in the network, whether in the Drop Wire, the Outside Plant (Cable), or the Central Office. Central Office troubles include translation troubles closed automatically by the CLEC.

Levels of Disaggregation:

Loop Troubles: (combination of UNE Platform, UNE Loop, UNE xDSL Loop)
Central Office Troubles: (UNE Platform)
Central Office Troubles: (combination of UNE Loop, UNE xDSL Loop and Line sharing)

Calculation:	**Report Structure/Geography:**
(Number of all trouble reports with found network troubles) divided by (Number of lines/circuits in service)	By state

Benchmark/Parity Performance Standard:

Parity with retail POTS

Impact on Carriers' Regulatory Burden:

Verizon currently reports its trouble report rate according to similar business rules in many states.

CLEC Reporting Requirement:

None

Comments:

The Commission should not adopt a trouble report measurement, because included within the trouble report rate are troubles that are also covered in two of the Commission's other proposed performance measurements: Installation Quality and Repeat Trouble Report Rate.

Trouble reports submitted within 30 days of installation or within 30 days of the closing of a previous trouble will also be counted in the trouble report rate measurement. This leads to double counting of those reports and potentially subjects the ILEC to duplicative penalties for the same trouble reports. Moreover, as the Commission has recognized, the installation quality and repeat trouble report measurements are more important gauges of an ILEC's performance than the total trouble report. *See New York Order*, 15 FCC Rcd at 4073-74, ¶ 222 & n.711; *Massachusetts Order*, 16 FCC Rcd at 9067, ¶ 143; *OSS Notice*, 13 FCC Rcd at 12854, ¶ 83.

Moreover, for troubles that are neither repeat nor installation trouble, any difference in performance is not within the control of Verizon. CLECs have access to the same facilities that the ILEC uses to serve its retail customers and often provide service over the very same facilities that the ILEC had previously been using. Therefore, even if a CLEC's "customers experience more incidents of trouble than the incumbent LEC's end users," NPRM ¶ 67, there is no reason to believe that discrimination on the part of the ILEC, rather than random variation, is the cause.

Further, the appropriate standard for this measurement, if the Commission elects to adopt it, is parity with retail. *See id.* ¶ 68. As explained above, because the 1996 Act requires nondiscriminatory performance, there is no reason to set a wholesale benchmark that may be higher or lower than retail performance.

The exclusions for subsequent trouble reports, CPE troubles, ILEC-reported troubles, "Found OK," and "Test OK," should apply to this measurement as well as to the installation quality measurement.

Metric Number:	**Name:**
11	Repeat Trouble Report Rate

Definition:

This metric measures the percentage of troubles cleared that have an additional trouble reported/cleared within 30 days for which a network trouble is found. A repeat trouble report is defined as a trouble on the same line/circuit as a previous trouble report that occurred within the last 30 calendar days of the previous trouble. Any trouble, regardless of the original Disposition Code, that repeats as a network trouble will be classified as a repeat report.

Exclusions:

A report is not scored as a repeat when the original report is:

- Reported by ILEC employees in the course of performing preventative maintenance, where no customer has reported a trouble
- Misdirected (for Loop troubles):
  - A report is misdirected if it is an original report closed to No Trouble Found (NTF), Found OK (FOK), or Customer Premises Equipment (CPE) and was dispatched in the opposite direction of the trouble that is ultimately found
- Closed to a No Access disposition code (a "no access" is scored only when access is not available within the appointment window)
- Reported on the Order Completion Date

Excluded from the repeat reports are:

- Subsequent reports (additional customer calls while the trouble is pending)
- CPE troubles
- Troubles reported, but not found upon dispatch (Found OK and Test OK)
- Troubles closed due to customer action
- Troubles reported by ILEC employees in the course of performing preventative maintenance, where no customer reported a trouble
- ILEC official orders
- Coin / payphone services

Business Rules:

See definition, above

Levels of Disaggregation:

Combination of UNE Loop, UNE Platform, UNE xDSL Loop

Calculation:	**Report Structure/Geography:**
(Number of network troubles that had previous troubles within the last 30 days) divided by (Total network troubles found within the calendar month)	By state

Benchmark/Parity Performance Standard:

Parity with retail POTS

Impact on Carriers' Regulatory Burden:

Verizon currently reports its repeat trouble report rate according to similar business rules in many states.

CLEC Reporting Requirement:

Percentage of repeat trouble reports submitted where the original report was misdirected

Comments:

The 30-day period for repeat trouble reports is appropriate and the Commission should not require further reporting under additional periods (*e.g.*, 60 days or 90 days). *See* NPRM ¶ 70. A line that is not fixed correctly the first time is likely to experience an out of service condition again in a short period of time, and certainly within 30 days. Any subsequent trouble report on that line beyond the 30-day period is most likely due to a separate, unrelated problem. Because the goal of the repeat trouble report rate is to measure the quality of ILECs' trouble resolution, *see id.* ¶ 69, this measurement should include only those repeat troubles that are most likely to indicate a problem with the initial trouble resolution effort.

Furthermore, Verizon's systems currently are not able to identify troubles submitted more than 30 days after the closing of a previous trouble report as repeat reports. Extensive and costly work to Verizon's systems would be required to implement this measurement if a period greater than 30 days were used.

Metric Number:	**Name:**
12	Time to Restore

Definition:

This metric measures the average trouble duration interval from trouble receipt to trouble clearance.

Exclusions:

- ILEC Affiliate (or separate division) troubles are excluded from the CLEC aggregate
- Subsequent reports (additional customer calls while the trouble is pending)
- Customer Premises Equipment (CPE) troubles
- Troubles reported but not found (Found OK and Test OK)
- Troubles reported on the Order Completion Date
- Troubles closed due to customer action
- Troubles reported by ILEC employees in the course of performing preventative maintenance, where no customer reported a trouble
- For troubles where the stop clock is used, the time period from when the stop clock is initiated until the time when the clock resumes
- Coin / payphone services

Business Rules:

For POTS and UNE Platform, trouble duration intervals are measured on a running-clock basis. Running clock includes weekends and holidays.

For UNE Loop and UNE xDSL Loop products, trouble duration intervals are measured on a limited stop-clock basis. A stop clock is used when the customer premises access, provided by the CLEC and its end user, is after the offered repair interval. For example, if customer premises access is not available on a weekend, the clock stops at 5:00 p.m. Friday, and resumes at 8:00 a.m. Monday. This applies to dispatched out tickets only.

Levels of Disaggregation:

Loop Trouble (combination of UNE Loop, UNE Platform, UNE xDSL Loop)
Central Office Trouble (combination of UNE Loop, UNE Platform, UNE xDSL Loop)

Calculation:	**Report Structure/Geography:**
(Sum of trouble clear date and time minus trouble receipt date and time for Central Office and Loop troubles) divided by (Number of Central Office and Loop troubles)	By state

Benchmark/Parity Performance Standard:

Parity with retail POTS

Impact on Carriers' Regulatory Burden:

Verizon currently reports its time to restore according to similar business rules in many states.

CLEC Reporting Requirement:

None

Comments:

This measurement should report the average time "from when a problem is reported to [the ILEC] to the time when [the ILEC] returns a trouble ticket resolution notification" to the CLEC. NPRM ¶ 72. It should not be calculated as a percentage of trouble reports cleared within a specified period of time. *See id.* Or, if CLEC performance is calculated as a percentage, retail performance should be as well, and the standard should remain parity with retail. As Verizon has explained above, the 1996 Act requires nondiscriminatory service and there is no reason to set a wholesale benchmark that may be higher or lower than retail performance on comparable products and services.

<table>
<tr><td colspan="2">Metric Number: Name:</td></tr>
<tr><td colspan="2">Verizon Proposal — 2 Timeliness of Carrier Bill</td></tr>
<tr><td colspan="2">Definition:</td></tr>
<tr><td colspan="2">The percentage of carrier bills sent to the carrier, unless the CLEC requests special treatment, within 10 business days of the bill date. The bill date is the end of the billing period for recurring, non-recurring, and usage charges.</td></tr>
<tr><td colspan="2">Exclusions:</td></tr>
<tr><td colspan="2">▪ ILEC Test Orders and Bills
▪ ILEC Affiliate (or separate division) Bills</td></tr>
<tr><td colspan="2">Business Rules:</td></tr>
<tr><td colspan="2">Includes the CLEC bill of record only</td></tr>
<tr><td colspan="2">Levels of Disaggregation:</td></tr>
<tr><td colspan="2">None</td></tr>
<tr><td>Calculation:</td><td>Report Structure/Geography:</td></tr>
<tr><td>(Number of carrier bills sent to CLEC within 10 business days of bill date) divided by (Number of carrier bills distributed)</td><td>By state</td></tr>
<tr><td colspan="2">Benchmark/Parity Performance Standard:</td></tr>
<tr><td colspan="2">95 percent on time</td></tr>
<tr><td colspan="2">Impact on Carriers' Regulatory Burden:</td></tr>
<tr><td colspan="2">Verizon currently reports the timeliness of its distribution of carrier bills according to similar business rules in many states.</td></tr>
<tr><td colspan="2">CLEC Reporting Requirement:</td></tr>
<tr><td colspan="2">None</td></tr>
</table>

Comments:

An ILEC's performance in distributing carrier bills to CLECs in a timely fashion is "particularly critical to carriers' ability to compete effectively" and, therefore, should be among the "core set of performance measurements" that the Commission adopts. NPRM ¶¶ 25, 27. As the Commission has recognized, "untimely wholesale bills can impede a competitive LEC's ability to compete in many ways." *Pennsylvania Order*, 16 FCC Rcd at 17431, ¶ 23; *see also OSS Notice*, 13 FCC Rcd at 12855, ¶ 88 ("Timely delivery of billing invoices is also necessary so that a competing carrier can have prompt notification of the amount it owes an incumbent LEC for use of the incumbent's services."); *id.* at 12856-57, ¶ 90 (proposing a similar performance measurement). For example, the Commission has stated that untimely wholesale

bills "diminish[]" CLECs' "capacity to monitor, predict and adjust expenses and prices in response to competition." *Pennsylvania Order*, 16 FCC Rcd at 17432, ¶ 23. Although state commissions have adopted multiple measurements of billing performance — such as billing accuracy or timeliness in responding to billing complaints — whether an ILEC's performance on those other measures is competitively significant depends, in large part, on whether the CLECs received their wholesale bills in a timely fashion. The most accurate bills and the most prompt dispute resolution process will be of less benefit to CLECs if they receive their wholesale bills weeks or months late.

Glossary

Application Date	The date that a valid order is received.
ASR	Access Service Request
ILEC Administrative Orders	Orders completed by ILEC for administrative purposes and not at the request of a CLEC or end user. These also include administrative orders for ILEC official lines.
Company Initiated Orders	Provisioning orders processed for administrative purposes and not at customer request.
Company Services	Official ILEC Lines
Completion Date	The date noted on the service order as the date that all physical work is completed as ordered.
Coordinated Cut-Over (Hot Cut)	A coordinated cut-over, or hot cut, is the live manual transfer of an ILEC end user to a CLEC completed with manual coordination by ILEC and CLEC technicians to minimize disruptions for the end user customer.
CPE	Customer Premises Equipment
Dispatched Orders	An order requiring dispatch of a ILEC Field technician outside of a ILEC Central Office.
Disposition Codes	The code assigned by the Field Technician upon closure of trouble.
FOC	Firm Order Confirmation
LSR	Local Service Request
LSRC	Local Service Request Confirmation
Mechanized Flow-Through:	Orders received electronically through the ordering interface and requiring no manual intervention to be entered into the service order processor.
Network Troubles	Troubles with a disposition code indicating that trouble was found in the Drop Wire, Loop, or Central Office. Excludes subsequent reports (additional customer calls while the trouble is pending), Customer Premises Equipment (CPE) troubles, troubles reported but not found on dispatch (Found OK and Test OK), and troubles closed due to customer action.
Non-Mechanized	Orders that require some manual processing. Includes orders received electronically that are not processed directly into the legacy provisioning systems, and are manually entered by an ILEC representative into service order processor.

No Dispatch Orders	Orders completed without a dispatch outside an ILEC Central Office. Includes orders with translation changes and dispatches inside an ILEC Central Office.
OSS	Operations Support Systems
POTS Services	Plain Old Telephone Services (POTS) include all non-designed lines/circuits that originate at a customer's premise and terminate on an OE (switch Office Equipment). POTS include Centrex, basic ISDN and PBX trunks.
PON	Purchase Order Number: Unique purchase order provided by CLEC to ILEC placed on LSRC or ASR as an identifier of a unique order.
Reject	An order is rejected when there are omissions or errors in required information. Rejects also include queries where notification is provided to a CLEC for clarification on submitted orders. The order is considered rejected and order processing is suspended while a request is returned or queried.
Run Clock	A measure of duration time where no time is excluded. Duration time is calculated comparing the date and time that a trouble is cleared to the date and time that the trouble was reported.
Special Services	Any service or element involving circuit design. Any service or element with four wires. Any DS0, DS1 and DS3, no access service. Excludes trunks.
Stop Clock	A measure of duration time where some time is excluded. The clock is stopped when testing is occurring, ILEC is awaiting carrier acceptance, or ILEC is denied access.
Suspend/Restore Orders	Orders completed by ILEC to suspend for non-payment or restore for payment subject to state commission guidelines.
Test Orders	Orders processed for "fictional" CLECs for ILEC to test new services, attestation of services, etc.
Two-wire digital ISDN Loop	2-Wire unbundled digital loop (previously called 2-Wire Digital Loop) that is compatible with ISDN basic Rate service. It is capable of supporting simultaneous transmission of two (2) B channels and One (1) D channel. It must be provided on non-loaded facilities with less than 1300 OHMs of resistance and not more than 6 kft of bridge tap. This service provides a digital 2-wire enhanced channel. It is equivalent to a 2-wire loop less than 18,000 feet from the NID at the end user's premises to the main distributing frame (which is connected to the CLEC's collocation arrangement), in ILEC's Central Office where the end user is served.

APPENDIX B

STATISTICAL TABLES FOR THE PROPOSED NATIONAL PERFORMANCE MEASUREMENTS

K-Table

Number of Parity Measurements	K
5-7	1
8-18	2
19-30	3

Probability of "Missing" Measurements Due to Random Variation

Number of Measurements	At least 1	1	2	3	4	5
	Number of Misses					
5	22.62%	20.36%	2.14%	0.11%	0.00%	0.00%
6	26.49%	23.21%	3.05%	0.21%	0.01%	0.00%
7	30.17%	25.73%	4.06%	0.36%	0.02%	0.00%
8	33.66%	27.93%	5.15%	0.54%	0.04%	0.00%
9	36.98%	29.85%	6.29%	0.77%	0.06%	0.00%
10	40.13%	31.51%	7.46%	1.15%	0.10%	0.01%
11	43.12%	32.93%	8.67%	1.37%	0.14%	0.01%
12	45.96%	34.13%	9.88%	1.73%	0.21%	0.02%
13	48.67%	35.12%	11.09%	2.14%	0.28%	0.03%
14	51.23%	35.93%	12.29%	2.59%	0.37%	0.04%
15	53.67%	36.58%	13.48%	3.07%	0.49%	0.06%
16	55.99%	37.06%	14.63%	3.59%	0.61%	0.08%
17	58.19%	37.41%	15.75%	4.15%	0.76%	0.10%
18	60.28%	37.63%	16.83%	4.73%	0.93%	0.14%
19	62.26%	37.74%	17.87%	5.33%	1.12%	0.18%
20	64.15%	37.74%	18.87%	5.96%	1.33%	0.22%
21	65.94%	37.64%	19.81%	6.60%	1.56%	0.28%
22	67.65%	37.46%	20.70%	7.26%	1.82%	0.34%
23	69.26%	37.21%	21.54%	7.94%	2.09%	0.42%
24	70.80%	36.88%	22.32%	8.62%	2.38%	0.50%
25	72.26%	36.50%	23.05%	9.30%	2.69%	0.60%
26	73.65%	36.06%	23.72%	9.99%	3.02%	0.70%
27	74.97%	35.58%	24.34%	10.68%	3.37%	0.82%
28	76.22%	35.05%	24.90%	11.36%	3.74%	0.94%
29	77.41%	34.48%	25.41%	12.04%	4.12%	1.08%
30	78.54%	33.89%	25.86%	12.70%	4.51%	1.24%

Small Sample Size Tables for Benchmark Measurements

90% Benchmark

Sample size	Maximum permitted misses
1	1
2 to 10	2

95% Benchmark

Sample size	Maximum permitted misses
1	1
2 to 20	2

APPENDIX C

THE VERIZON TELEPHONE COMPANIES

THE VERIZON TELEPHONE COMPANIES

The Verizon Telephone Companies are the local exchange carriers affiliated with Verizon Communications Inc. They are:

Contel of the South, Inc. d/b/a/ Verizon Mid-States
GTE Midwest Incorporated d/b/a/ Verizon Midwest
GTE Southwest Incorporated d/b/a/ Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.